



# UNITED STATES MARINE CORPS

MARINE FORCES RESERVE  
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NEW ORLEANS, LOUISIANA 70146-5400

IN REPLY TO  
ForO P5800.6A  
SJA  
NOV 06 2006

FORCE ORDER P5800.6A

From: Commander, Marine Forces Reserve  
To: Distribution List

Subj: MARINE FORCES RESERVE STANDARD OPERATING PROCEDURES FOR  
LEGAL ADMINISTRATION (SHORT TITLE: MARFORRES LEGAL SOP)

Encl: (1) LOCATOR SHEET

1. Situation. To update policies and procedures concerning legal and legal administrative matters within Marine Forces Reserve (MARFORRES).

2. Cancellation. ForO P5800.6.

3. Mission. This revision contains substantial changes and must be completely reviewed.

4. Execution. Recommendations concerning the contents of the Marine Forces Reserve Standard Operating Procedures for Legal Administration are invited. Such recommendations will be forwarded to the MARFORRES Staff Judge Advocate (SJA) via the chain of command.

5. Administration and Logistics. This SOP is applicable to the Marine Corps Reserve.

6. Command and Signal. Reviewed and approved this date.

R. E. BRAITHWAITE  
Executive Director

DISTRIBUTION: D

LOCATOR SHEET

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LEGAL ADMINISTRATION (SHORT TITLE: MARFORRES LEGAL SOP)

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MARFORRES LEGAL SOP

RECORD OF CHANGES

Log completed change actions as indicated.

Change Number	Date of Change	Date Entered	Signature of Person Entering Change

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# MARFORRES LEGAL SOP

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## INTRODUCTION

0001. PURPOSE. The MARFORRES Legal SOP is published to promulgate policies, procedures, guidance, and instructions for the administration of discipline, law, and legal matters within MARFORRES.

### 0002. SCOPE

1. The MARFORRES Legal SOP sets forth procedures and responsibilities for the maintenance of discipline and the administration of laws and regulations relating thereto.

2. This Legal SOP supplements the Uniform Code of Military Justice (UCMJ), the Manual for Courts-Martial (MCM), Manual of the Judge Advocate General of the Navy (JAGMAN), Marine Corps Manual for Legal Administration (LEGADMINMAN), and other pertinent directives of higher authority. Provisions of the foregoing are restated herein only to the extent considered necessary for clarity, emphasis, elaboration, or convenience of reference.

3. In the event any portion of this Legal SOP conflicts with any regulation of higher authority, the provision of the regulation issued by higher authority shall be controlling. MARFORRES end users who identify such conflicts are requested to bring them to the attention of the MARFORRES SJA.

0003. LEGAL EFFECT. The MARFORRES Legal SOP is designed to establish procedures and policies regarding legal matters within MARFORRES. Nothing contained in this SOP shall be interpreted to impose additional obligations upon the U.S. Government or grant an accused or respondent additional rights or privileges that are not established in law or regulation.

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MARFORRES LEGAL SOP

CHAPTER 1

ADMINISTRATIVE AND ORGANIZATIONAL MATTERS

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# MARFORRES LEGAL SOP

## CHAPTER 1

### ADMINISTRATIVE AND ORGANIZATIONAL MATTERS

1000. GENERAL. The MARFORRES Legal SOP applies to Headquarters, MARFORRES and all subordinate commands. The MARFORRES Legal SOP supplements directives of higher authority and establishes guidelines for the administration of legal matters within MARFORRES.

#### 1001. CONVENING AUTHORITY (CA)

1. General Court-Martial Convening Authority (GCMCA). Article 22, UCMJ and section 0120 of the Manual of the Judge Advocate General (JAGMAN) designate officers authorized to convene general courts-martial (GCM). Within MARFORRES the Commander, MARFORRES (COMMARFORRES) and the Commanding Generals (CG's) of the 4<sup>th</sup> Marine Division (4<sup>th</sup> MARDIV), 4<sup>th</sup> Marine Aircraft Wing (4<sup>th</sup> MAW), 4<sup>th</sup> Marine Logistics Group (4<sup>th</sup> MLG), and Marine Corps Mobilization Command (MOBCOM) are authorized by the UCMJ and JAGMAN to convene GCM's.

2. Special Court-Martial Convening Authority (SPCMCA). In addition to those officers authorized by UCMJ, Article 23(a)(1), (a)(5), and (a)(6) to convene special courts-martial (SPCM), paragraph 0120 of the JAGMAN authorizes the following officers, when in an active duty, active duty for training, or inactive duty training status to convene SPCM:

a. Regular and Reserve Commanding Officers (CO) of all battalions and squadrons.

b. Any commander in the operational or administrative chain of command whose subordinates have authority to convene SPCM.

c. All Inspector-Instructors (I-I's) and Site COs of Marine Corps Reserve organizations.

#### 3. COMMARFORRES withholding of SPCMCA

a. Pursuant to the authority vested in COMMARFORRES by Rule for Courts-Martial (R.C.M.) 306 of the MCM and by JAGMAN, section 0122a, the exercise of SPCMCA for all I-I's below the battalion level is hereby withheld. Additionally, SPCMCA is hereby withheld from all 4<sup>th</sup> MAW site commanders below the grade of O-4 (Major).

b. The withholding of the exercise of SPCMCA does not affect summary courts-martial convening authority; nonjudicial punishment (NJP) authority; promotion authority granted by MCO P1400.32\_, MARCORPROMMAN; nor authority to convene an Administrative Separation Board.

4. The authority of MARFORRES commanding officers, I-I's, and site commanders to convene courts-martial and to impose NJP may be exercised by both the operational and administrative chains of command. When an individual is subject to punishment by more than one command, it is incumbent on those commanders to coordinate to determine who will exercise disciplinary authority.

#### 1002. LEGAL SERVICES

1. SJA, MARFORRES. The MARFORRES SJA is a special staff officer to COMMARFORRES. The SJA provides command legal advice, staff legal review, trial services, litigation support, legal training, and investigative support to COMMARFORRES; CG's 4<sup>th</sup> MARDIV, 4<sup>th</sup> MAW, 4<sup>th</sup> MLG, and MOBCOM; CO Headquarters Battalion, MARFORRES; all force level units, and all MARFORRES subordinate commands, to include I-I's, site commanders, and active duty and reserve commanding officers.

a. The MARFORRES SJA provides legal advice in the areas of military justice, officer misconduct, officer and enlisted involuntary separations, claims and investigations, military personnel issues, international and operational law, and congressional correspondence.

b. The MARFORRES SJA is responsible for providing MARFORRES commands with government trial counsel to represent the United States in all Article 32, UCMJ pretrial investigations and all special and general courts-martial. MARFORRES SJA also provides a judge advocates to act as recorders in all Boards of Inquiry. Refer to chapter 4, figure 4-1 of this SOP for preparing a Request for Legal Services (RLS).

2. MARFORRES Office of Counsel. The MARFORRES Office of Counsel is composed of civilian attorneys who are members of the Office of General Counsel, Department of the Navy.

Counsel provides legal advice to COMMARFORRES, MARFORRES staff sections, and subordinate commands on legal issues in the areas of environmental law, labor law, equal employment opportunity, civilian personnel law, government contract law, government standards of conduct, ethics, and other areas specified by SECNAVINST 5430.25\_.

3. MOBCOM SJA. The MOBCOM SJA is a special staff officer to the CG, MOBCOM. The MOBCOM SJA advises the CG and MOBCOM staff sections on all legal matters.

4. Reserve Major Subordinate Command (MSC) SJAs. The Reserve MSC (4th MARDIV, 4th MAW, 4th MLG) SJAs will perform duties as special staff officers to their respective Commanding Generals.

5. Marine Forces Reserve Legal Services Support Section (MARFORRES LSSS). The MARFORRES LSSS is a Force-level command that provides centrally managed administration, command and control of the delivery of Reserve legal services to the total Force and ensures that trained, qualified legal personnel are available to support active duty requirements as directed. The MARFORRES LSSS is led by a command selected Reserve colonel and is supported by an active reserve colonel I-I. In order to support the warfighting needs of the total force, the MARFORRES LSSS is composed of the Regional Judge Advocate Sub-Det (RJA), Navy-Marine Corps Trial Judiciary Sub-Det, Law of War/Operational Law Sub-Det, Installation SJA Sub-Det, and Reserve Defense Counsel Sub-Det.

6. RJA. RJAs are assigned across the continental United States and Hawaii, and report to the Officer-in-Charge (OIC) of the RJA Sub-Det.

a. RJA Responsibilities - Peacetime. RJA's are commissioned Marine officers, certified in accordance with Article 27(b), UCMJ, and the rules promulgated by the Judge Advocate General of the Navy. The RJA's are responsible for providing pre-mobilization legal assistance services to all major subordinate MARFORRES commands and their Selected Marine Corps Reserve (SMCR) units within their designated geographical region. Marine Corps Reserve sites and units will be visited by their RJA on a circuit basis. SMCR unit commanders, site commanders, and I-I's should coordinate the RJA's visit to ensure the effective and efficient provision of legal services to active duty and Reserve servicemembers.

b. RJA Responsibilities - Mobilization. Upon mobilization, the OIC RJA Sub-Det coordinates RJAs in a task organized unit to perform premobilization legal assistance for units according to the deployment plan.

c. Premobilization Legal Assistance. Premobilization legal assistance includes:

(1) Drafting and finalizing wills and powers of attorney,

(2) Conducting a legal review of family care plans per MCO 1740.13\_, and;

(3) Training supported units on the Soldier's and Sailor's Civil Relief Act, Uniform Services Employment and Reemployment Rights Act, Law of War, Standards of Conduct/Ethics, and the UCMJ.

d. RJA's will not provide military justice advice to MARFORRES commands. Either the MARFORRES SJA or MSC SJA will provide all military justice advice to MARFORRES commands.

#### 7. Defense Counsel

a. The RJA's will not perform defense counsel duties for servicemembers within their region. Defense counsel services will be provided by the MARFORRES Defense Counsel, Marine Corps Regional Defense Counsel, the MARFORRES LSSS Reserve Defense Counsel Sub-Det, or the nearest Naval Legal Service Office (NLSO).

b. Requests for defense counsel should be forwarded directly to the Military Justice Officer (MJO), Office of the SJA, MARFORRES, who will then contact the appropriate defense counsel.

#### 1003. COMMAND RESPONSIBILITY

1. Ultimate Responsibility. Commanders are responsible for maintaining good order and discipline within their commands and conducting training and operations per international, federal, state, and local law. The OSJA and MARFORRES LSSS assist the commander by providing advice and legal services support.

2. Military Justice Training. CO's and I-I's will ensure that the following instructions are carried out as required by current directives:

a. Periodic explanation of the UCMJ as required by Article 137, UCMJ;

b. Periodic explanation of the types of characterization of service upon separation, the basis for the characterization, and their possible effects upon reenlistment, civilian employment, veterans benefits and denial of certain benefits to members who fail to complete at least two years of their original enlistment, as required by MCO P1900.16\_, paragraph 6103; and

c. Law of War and operational law training as required by MCO 3300.3\_.

# MARFORRES LEGAL SOP

## CHAPTER 2

### ENLISTED NONJUDICIAL PUNISHMENT

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# MARFORRES LEGAL SOP

## CHAPTER 2

### ENLISTED NONJUDICIAL PUNISHMENT

#### 2000. GENERAL

1. NJP provides Commanders with an essential and prompt means of maintaining good order and discipline, and also promotes positive behavior changes in servicemembers without the stigma of a court-martial conviction. NJP is ordinarily appropriate when administrative corrective measures (e.g., formal counseling) are inadequate due to the nature of the minor offense or the record of the servicemember. Commanders considering NJP should consider, at a minimum, the nature of the offense, the record of the servicemember, the needs of good order and discipline, and the effect of NJP on the servicemember.

2. A Commander who is considering a case for disposition under UCMJ article 15 will exercise personal discretion in evaluating each case, both as to whether NJP is appropriate and as to the nature and amount of punishment appropriate. Only minor offenses should be disposed of by NJP. Whether an offense is "minor" depends on several factors: the nature of the offense; the circumstances surrounding its commission; and the offender's age, rank, duty assignment, record, and experience. The decision whether an offense is "minor" is a matter of discretion for the commander imposing NJP; however, superior authority may disagree and take cognizance over the matter.

#### 2001. AUTHORITY TO IMPOSE NJP

1. CO's, I-I's, and Table of Organization (T/O) Officers-in-Charge (OIC's). The authority to impose NJP on enlisted members is restricted to CO's (Regular and Reserve) and any commissioned officer (CWO-2 and above) designated as OIC of a unit by Departmental Orders, T/O, manpower authorizations, or orders of any general officer in command (JAGMAN 0106). I-I's are CO's for the purpose of imposing NJP upon the active duty personnel of their command (MCO P1001R.1 (MCRAMM), paragraph 5001, and JAGMAN, section 0120b(6)).

2. Non-T/O OIC. All OIC's whose billets are not listed on their unit T/O as OIC do not inherently possess NJP authority. Non-T/O OIC's must receive a letter from their General Officer designating them as OIC of that unit. Devolution of authority does not apply to non-T/O OIC's designated under this paragraph.

A change in the OIC requires a new letter for the successor. Such letters must be obtained from the appropriate Commander/CG General via SJA, COMMARFORRES. Figure 2-1 of this SOP is a sample request letter.

3. Reserve Officers Imposing NJP. Reserve officers imposing NJP must be in a duty status, subject to the UCMJ, at the time they impose NJP (JAGMAN, section 0106(a)).

## 2002. JURISDICTION

1. Jurisdiction over the Accused. At the time NJP is imposed, the command must have jurisdiction over the accused. The command has jurisdiction over the accused when the accused is on active duty or inactive duty for training with the organization of the officer who imposes the punishment. A person may be a member of, and under the jurisdiction of, more than one organization or unit at the same time, such as when assigned or attached to an organization or unit for the purpose of performing Temporary Additional Duty (TAD). Therefore, a person on TAD can receive NJP from either the temporary duty commander or the parent unit commander, but not from both commanders for the same offense. Cooperation between the commanders with concurrent jurisdiction is recommended to determine who will impose NJP.

2. Jurisdiction over the Offense. In addition to jurisdiction over the accused, the NJP authority must have jurisdiction over the offense. Jurisdiction over the offense exists when the servicemember commits an offense punishable by the UCMJ while on active duty or inactive duty training.

3. A reservist who commits an offense while on active duty or inactive duty for training, but goes off duty before disciplinary action is taken, can be the subject of NJP during a subsequent active duty or inactive duty for training period. Any reservist who refuses to attend drill in order to avoid being taken to NJP may be ordered involuntarily to active duty for NJP proceedings if the order to active duty is approved by the respective Commander/CG in accordance with Article 2, UCMJ.

2003. ACTION PRIOR TO IMPOSING NJP. If after a preliminary inquiry the NJP authority determines that disposition by NJP is appropriate, the NJP authority will cause the servicemember to be notified of his decision. The formats provided in JAGMAN, A-1-d, will be used for this purpose.

## 2004. ELECTION OF RIGHTS

1. Refusal of NJP. Except in the case of a person attached to or embarked on a vessel, a servicemember may refuse NJP and

request trial by court-martial any time prior to the imposition of punishment. Punishment is imposed when the officer conducting the NJP announces the punishment. If the servicemember refuses NJP, the NJP proceedings will be terminated. It is within the discretion of the NJP authority whether to forward or refer charges for trial by court-martial. If the NJP authority decides to forward charges, prepare a RLS as provided in Figure 4-1 of this SOP.

2. Consultation with a Judge Advocate. In order for a record of NJP to be admissible during the sentencing phase at a later court-martial, the accused must either consult with a military defense counsel or waive consultation prior to the NJP hearing. Consultation with a military defense counsel may be done over the telephone.

3. NJP Accepted. Before NJP may be imposed, the servicemember will be entitled to appear personally before the NJP authority (exceptions are listed in MCM, Part V, paragraph 4c(1)) and will be afforded the following rights:

- a. To be informed of the provisions of UCMJ, Article 31(b);
- b. To be accompanied by a spokesperson provided or arranged for by the servicemember, unless the punishment will not exceed 14 days extra duties, 14 days restriction, and an oral reprimand. The proceedings need not be delayed to permit the presence of the spokesperson. The spokesperson may speak for the accused but may not question witnesses except as the NJP authority may allow as a matter of discretion;
- c. To be informed orally or in writing of the information against him relating to the offenses alleged;
- d. To be allowed to examine documents or physical objects to be used as evidence and which the NJP authority intends to consider in deciding disposition of the case;
- e. To present matters in extenuation and mitigation, orally and in writing;
- f. To have witnesses present if their testimony and statements will be relevant and they are reasonably available;
- g. To have the hearing open to the public unless the NJP authority determines that the proceedings should be closed for good cause, or unless the punishment imposed will not exceed 14 days extra duties, restriction for 14 days, and an oral reprimand; and

h. The servicemember will be informed of his right to remain silent, and that matters submitted may be used against the member in a subsequent trial by court-martial.

NOTE: The original notification should be filed with the Unit Punishment Book (UPB).

#### 2005. THE NJP PROCEEDING

1. Specific instructions for conducting the NJP hearing are set forth in the MCM, Part V, paragraph 4, and JAGMAN, section 0110. If the servicemember personally appears before the NJP authority, use the Office Hours Guide provided in JAGMAN, A-1-e.

2. Advice Regarding Appeal. After punishment has been announced and prior to concluding the NJP hearing, the Commander must advise the accused of the right to appeal. This advisement is included in the Office Hours Guide in JAGMAN, Appendix A-1-e. After the hearing, have the accused complete the Acknowledgment of Appeal Rights. Use the form provided in JAGMAN, Appendix A-1-f.

2006. RECORDING THE NJP. When a Commander determines that an offense should either be disposed of at NJP or referred to higher authority, a UPB form will be prepared. See Chapter 3 of the LEGADMINMAN for specific guidance on completing the UPB.

2007. RULES OF EVIDENCE AT NJP. The Military Rules of Evidence (MRE), other than with respect to privileges, do not apply at NJP. Therefore, the officer imposing NJP may consider any matter he or she deems relevant in determining the guilt or innocence of the servicemember or the appropriate punishment.

#### 2008. MAXIMUM PUNISHMENTS

1. MCM, Part V, paragraph 5b, and JAGMAN, sections 0111-0112, set forth authorized maximum punishments. The authorized punishments are set forth in table format in figure 2-2 of this SOP.

2. The authority to impose NJP vests in the office assumed; however, the grade of the person succeeding to command may limit the amount of punishment he may impose. For example, should a company grade officer temporarily assume a command held by a field grade officer, he may only impose those punishments authorized for a company grade officer. All OIC's, regardless of grade, are limited to company-grade punishments. Additionally, frocked officers may only impose those punishments authorized for their actual pay grade.

### 3. Reduction Authority

a. Officers with NJP authority may adjudge a reduction to the next inferior pay grade if the grade from which demoted is within their promotion authority. Per the MARCORPROMAN, only majors and above have promotion authority; therefore only majors and above, who have NJP authority, may reduce enlisted personnel (E-2 to E-5). See MCO P1400.32, MARCORPROMAN VOL 2, ENLPROM, paragraph 1200.3(b)(1)). Additionally, JAGMAN, section 0111, limits reduction at NJP to the next inferior pay grade only. Thus, majors and above with NJP authority can only reduce an accused one-pay grade at NJP.

b. Reduction Authority over USN/USNR Personnel. The reduction authority over USN/USNR personnel is the same as stated above except that it applies from pay grade E-2 through E-6.

### 4. Forfeitures

a. General. Pay subject to forfeiture refers only to basic pay plus any sea or foreign duty pay. If punishment includes reduction and forfeiture, regardless of whether the reduction was suspended, forfeitures are calculated based on the grade to which reduced. Express the forfeiture in whole dollar amounts, rounded to the lower dollar amount (e.g., \$38.75 rounds to \$38.00). If applied to more than one month, state the amount to be forfeited per month and the number of months (e.g., \$200.00 per month for two months). Forfeitures are imposed on future entitlement of pay only and cannot be assessed against pay accrued prior to imposition of punishment.

#### b. Computing Maximum Forfeiture of Reserve Pay at Company Grade Level

(1) Based on Drills Only: Single drill period basic pay multiplied by the number of drill periods scheduled within the next 30 days multiplied by .2333 (round to the lower whole dollar amount).

(2) Based on Annual Training (AT) Plus Drills: Single day AT basic pay multiplied by the number of days AT remaining during current AT period multiplied by .2333 PLUS single drill period basic pay multiplied by the number of drill periods scheduled within the next 30 days multiplied by .2333 (round to the lower whole dollar amount).

#### c. Computing Maximum Forfeiture of Reserve Pay at Field Grade Level

(1) Based on Drills Only: Single drill period basic pay

multiplied by the number of drill periods scheduled within the next 60 days multiplied by .5 (round to lower whole dollar amount).

(2) Based on AT Plus Drills: Single day AT basic pay multiplied by the number of days AT remaining on AT period multiplied by .5 PLUS single drill period basic pay multiplied by the number of drill periods scheduled within the next 60 days multiplied by .5 (round to the lower whole dollar amount).

5. Restriction of Members of the Selected Marine Corps Reserve (SMCR). Per section 0112 of the JAGMAN, restriction, if imposed upon members of the SMCR during a drill weekend or AT, will end at the conclusion of that training period. However, remaining periods of restriction may be carried over to subsequent periods of drill or AT. The SMCR reservist will not be held beyond the normal training period in order to serve the imposed restriction. Restriction must be directed to specific limits, and those limits must be specified on the UPB.

6. Limitations on Combining Punishments. The MCM, Part V, paragraph 5d, sets forth the limitations on combining punishments. These limitations are restated in figure 2-2 of this SOP.

#### 7. Other Administrative Measures

a. Used Together With NJP. The misconduct for which the NJP was awarded can also be the subject of Extra Military Instruction (EMI), a nonpunitive letter of caution, or an adverse performance evaluation (adverse fitness report or proficiency/conduct markings); however, these measures are NOT NJP and cannot be awarded as NJP. Therefore, the use of such measures cannot be recorded on the UPB. EMI can be recorded on page 11 of the SRB. The issuance of a nonpunitive letter of caution cannot be documented in official records (such as a page 11 entry or fitness report), but the conduct itself leading to the issuance of the letter can be documented in such records.

b. Counseling. Generally, a Marine who receives NJP should be counseled formally after the hearing concerning the conduct for which he received the NJP. If he is counseled, the counseling will be recorded on page 11 of the SRB in accordance with guidance provided in the IRAM and the format found in the current edition of MCO P1900.16 (MARCORSEPMAN), paragraph 6105.

#### 2009. LIMITATIONS ON PUNISHMENT

1. Double Punishment Prohibited. When NJP has been imposed for an offense, further NJP may not again be imposed for the same offense.

2. Increase in Punishment Prohibited. Once NJP has been imposed, it may not be increased, upon appeal or otherwise.

3. Multiple Punishment Prohibited. When a commander determines that NJP is appropriate for a particular servicemember, all known offenses, including all such offenses arising from a single incident or course of conduct, will ordinarily be considered together, and not be made the basis for multiple punishments.

4. Statute of Limitations. NJP may not be imposed for offenses which were committed more than two years before the date of imposition. Periods in which the accused is absent without authority or fleeing from justice will be excluded in computing the two-year period.

5. Civilian Courts. NJP may not be imposed for an offense tried by a Federal, State or foreign court unless authorized by the GCMCA of the command imposing the NJP. (JAGMAN, section 0124).

6. Units Attached to Ships. The CO or OIC of a unit attached to a ship of the United States Navy for duty should, as a matter of policy while the unit is embarked thereon, refrain from exercising his authority to impose NJP. All such matters should be referred to the CO of the ship for disposition in accordance with JAGMAN section 0108a.

#### 2010. EFFECTIVE DATE OF PUNISHMENTS

1. Reductions and Forfeiture. These punishments, if unsuspended, take effect on the date punishment is imposed (MCM, Part V, paragraph 5g).

2. Restraint and Extra Duties. These punishments, if unsuspended, take effect on the date punishment is imposed, except under the following circumstances (JAGMAN, section 0113 and MCM, Part V, paragraph 7):

a. The restraint or extra duties may be stayed if the accused files a timely written appeal, and the accused specifically requests in the appeal that such punishment be stayed; the restraint or extra duties will be stayed if the officer who will act on the appeal fails to act on the appeal within 5 days from submission of the appeal. The appeal is submitted when presented or delivered via U.S. Mail to the officer who imposed NJP.

#### 2011. REMEDIAL ACTION ON IMPOSED PUNISHMENT (MCM, Part V, paragraph 6)

1. An officer who imposes NJP may take remedial action by

setting aside, suspending, remitting or mitigating any part or amount of the punishment imposed.

a. Setting Aside. Setting aside is the act of restoring all rights, privileges and property affected by the executed punishment. In short, it puts the accused back in the same position he/she would be in had the NJP never occurred. It should only be exercised when the authority acting on the case believes that, under all circumstances of the case, the punishment has resulted in a clear injustice.

b. Mitigation. Mitigation is a reduction in quantity or quality of the punishment imposed.

c. Remission. This action relieves the accused of serving any portions of the punishment imposed that remain. It does not involve the restoration of forfeitures or rank already taken.

d. Suspension. Suspension is an action to withhold the imposition of any unexecuted punishment for a specified period of time. At the end of this "probationary period," the suspended portions are remitted automatically. An action suspending punishment includes an implied condition that the servicemember not commit an offense under the UCMJ during the "probationary period." See paragraph 2014 for guidance on vacating a suspended sentence.

2. Authority of other Officers to take Remedial Action. The following officers may also take remedial action:

a. A successor in command to the imposing officer (except a non-T/O OIC without express NJP authority).

b. The commander of any command to which the accused is subsequently transferred.

c. The next superior NJP authority in the chain of command (JAGMAN, section 0118).

3. Restrictions on Remedial Action. Remedial action should normally be taken within 4 months of imposition of the NJP.

## 2012. APPEAL OF NJP

1. General. Any servicemember punished under UCMJ, article 15, who considers the punishment to be unjust or disproportionate to the offense may appeal to the next superior authority.

2. Time Limit. The appeal must be submitted within 5 days of the date punishment is announced at NJP. Failure to submit an



appeal within the five-day period will constitute a waiver of the right unless good cause can be shown for not submitting in a timely manner. The accused may request an extension of time to file an appeal from the officer who imposed the NJP, and that officer, if good cause is shown for the delay, may grant such a request.

3. Format. The appeal will be in writing and should include the appellant's reasons for regarding the punishment as unjust or disproportionate. It will be addressed to the officer who imposed NJP for forwarding per JAGMAN, section 0117.

4. Action by Officer who Imposed NJP. By forwarding endorsement, the officer who imposed the NJP should address the evidence considered at the NJP hearing, the justness and appropriateness of the punishment imposed, and other matters that may assist the officer who will act on the appeal. The original UPB, copy of the preliminary inquiry (if any), evidence considered, and a copy of the accused's service record book will be included as enclosures (JAGMAN, section 0116c). The officer who imposed punishment may also take action as described in paragraph 2011 of this SOP. The appeal shall be forwarded to the officer next superior in the operational chain of command.

#### 2013. ACTION BY SUPERIOR AUTHORITY ON NJP APPEAL

1. General. In acting on an appeal, the superior authority may exercise the same power with respect to punishment imposed as the officer that imposed the punishment. The superior authority may take any of the actions described in paragraph 2011 of this SOP, even if no appeal is filed.

2. Judge Advocate (JA) Review. Prior to taking action on an appeal from NJP that includes one or more of the following punishments, the appeal must be reviewed by a JA:

- a. Correctional custody for more than seven days.
- b. Forfeiture of more than seven days pay.
- c. Reduction from the grade of E-4 and above.
- d. Extra duties for more than 14 days.
- e. Restriction for more than 14 days.

Such appeals should be forwarded to the respective MSC SJA for review.

3. Matters Considered. When reviewing the action of an officer

who imposed NJP, the superior authority may consider the record of proceedings, any matters submitted by the servicemember, any matters considered during the legal review (if applicable), or any other relevant matters.

4. Additional Proceedings. If the superior authority sets aside an NJP due to procedural error, that authority may authorize subsequent proceedings under UCMJ, article 15, to be conducted by the officer who imposed the NJP, the commander, or a successor in command for the same offenses involved in the original proceedings. Any punishment imposed at these subsequent proceedings may not be more severe than that originally imposed.

5. Final Action. Upon completion of action by the superior authority, the servicemember upon whom NJP was imposed will be promptly notified in writing of the result.

#### 2014. VACATION OF SUSPENDED PUNISHMENT

1. General. If the accused commits another offense under the UCMJ during a period of suspension, that suspension of punishment may be vacated. An unauthorized absence of the accused interrupts the period of suspension for the amount of time the accused is absent.

2. Procedure. The accused should be given an opportunity to respond before a suspension is vacated. Although a hearing is not required, the accused should be given an opportunity to appear before the commander in order to present any matters in defense, extenuation, or mitigation of the offense on which the vacation action is based. Vacation is not punishment, and the accused cannot appeal the vacation action. As a practical matter, suspended punishment should be vacated before subsequent NJP is imposed. Imposition of NJP for the additional offense is authorized and is considered a separate action. Commands should complete the UPB and make the appropriate Unit Diary and Service Record Book (SRB) entries. Refer to the LEGADMINMAN, paragraphs 3006 and 3007.

MARFORRES LEGAL SOP

UNIT LETTER HEAD

5812  
Code

From: Commanding Officer  
To: Commanding General, (MSC)  
Via: Staff Judge Advocate, Marine Forces Reserve

Subj: REQUEST FOR DESIGNATION AS NON-T/O OFFICER IN CHARGE OF  
UNIT/RUC)

Ref: (a) JAGMAN, Sec. 0106b  
(b) ForO P5800.6

1. Per the references, request that the following named officer  
be designated as Officer in Charge of (UNIT/RUC).

Major Jack N. Beanstalk 123 45 6789/0000 USMC(R)

2. (Justification)

3. Point of contact at the unit is (POC and phone number).

Signature

# MARFORRES LEGAL SOP

## Article 15 Punishment Limitations

Punishment	Field Grade Commanders/I&Is	Company Grade Commanders/I&Is and OICs
Admonition or Reprimand	YES	YES
Reduction <sup>1</sup>	1 grade	NO
Forfeitures <sup>2</sup>	½ pay per month for two months	7 days pay
Restriction <sup>3</sup>	60 days	14 days
Extra duties <sup>4</sup>	45 days	14 days
Correctional Custody <sup>5</sup>	30 days	7 days
Confinement on Bread and Water or diminished rations <sup>6</sup>	3 days	3 days

1. Only pay grades E-5 and below may be reduced at NJP. Reduction of one grade only is authorized.

2. When reduction and forfeitures are awarded together, forfeitures are based on the grade to which reduced, whether the reduction was suspended or not.

3. Restriction on reservists during an IADT or AT shall not extend beyond that training period, but may be carried over to a subsequent period.

4. Extra duty before or after routine duties have been completed constitutes the punishment. Normally, extra duty will not extend to more than two hours per day and should not be performed on Sunday. Extra duties will not be imposed on reserve component personnel on inactive duty training. Restriction and extra duty can run concurrently, not to exceed the maximum sentence for extra duty.

5. Correctional custody may be imposed on grades E-3 and below. It will not be imposed with restriction, extra duty, or confinement on bread and water or diminished rations. Correctional custody will not be imposed on reserve component personnel on inactive duty training.

6. Confinement on bread and water or diminished rations may only be imposed on persons attached to or embarked on a vessel in the grades of E-3 and below. It may not be imposed with correctional custody, extra duty, or restriction. Confinement on bread and water may not be imposed upon a reserve component service member, unless the service member was ordered to active duty with Secretarial approval.

Figure 2-2 -- Maximum Punishments Table

MARFORRES LEGAL SOP

CHAPTER 3

OFFICER MISCONDUCT

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# MARFORRES LEGAL SOP

## CHAPTER 3

### OFFICER MISCONDUCT

3000. GENERAL. The COMMARFORRES retains final decisional authority over all officer misconduct cases within MARFORRES. This, however, does not release subordinate commanders from their responsibility to conduct an investigation, forward the completed investigation, and provide recommendations as to the disposition of the case. Additionally, all cases of officer misconduct must be reported to the MARFORRES SJA as soon as practical to ensure that the Commandant of the Marine Corps (CMC) is notified in accordance with MCO P5800.16\_.

#### 3001. INITIAL ACTION

1. Immediately upon receipt of information that an officer committed an offense punishable under the UCMJ, and prior to initiating an investigation, the respective MSC Commanding General will be notified. The immediate commander of the suspected officer will also contact the MARFORRES Military Justice Section. Be prepared to provide the Military Justice Section with the name, grade, MOS, social security number, and location of the officer; the source of the allegation(s); the nature of the offense(s); and anticipated disposition of the case by either the unit or civilian authorities. Additionally, the immediate commander of the officer is required to submit a written report (utilizing the sample at figure 3-1) to the MJO within 5 days after the command is notified of the alleged misconduct.

2. The MARFORRES SJA is responsible for advising the respective MSC CG on what investigatory action to take, and for ensuring that all officer misconduct within MARFORRES is reported to CMC (SJA) as required by MCO P5800.16\_.

#### 3002. INVESTIGATING OFFICER MISCONDUCT

1. If authorized by the immediate CG of the officer suspected of an offense, the local commander will initiate a preliminary inquiry. The proper format for convening a preliminary inquiry is provided in figure 3-2. Unless the immediate commander personally conducts the inquiry, he or she should appoint an investigating officer who is senior in grade to the officer being investigated.

2. All investigations into officer misconduct will be forwarded up the chain of command to the COMMARFORRES, via the MARFORRES SJA. Forwarding endorsements will include specific recommendations regarding disposition, to include court-martial, NJP, relief for cause, or punitive censure. Additionally, comment should be made regarding whether or not the officer should be required to show cause for retention at a Board of Inquiry (BOI).

3003. COMMAND ACTION IN RESPONSE TO OFFICER MISCONDUCT. No adverse action will be taken against any MARFORRES officer until COMMARFORRES has had the opportunity to review the investigations and evidence in the case. Prohibited adverse actions, prior to COMMARFORRES review, include, but are not limited to, relief for cause, NJP, non-punitive censure, and adverse performance evaluations.

3004. NJP AND COURT-MARTIAL OF OFFICERS. If it is determined that an officer in MARFORRES will be the subject of NJP or a court-martial, the MARFORRES SJA will assume full responsibility for preparing the case for action. In the case of NJP, the MARFORRES SJA will advise the command on proper NJP procedures, prepare the "NJP Package," assist the command in processing any NJP appeal, and submit the required NJP Report to CMC. MARFORRES Military Justice Section will provide these NJP services regardless of what level of command conducts the NJP of the officer. The court-martial of officers will be handled in accordance with Chapter 4 of this SOP.

3005. SHOW CAUSE AND BOI. COMMARFORRES is the designated Show Cause Authority for all officers assigned to MARFORRES to include officers within the Inactive Ready Reserve (IRR). COMMARFORRES may require an officer to show cause as to why he/she should not be involuntarily separated from the United States Marine Corps or the United States Marine Corps Reserve. MARFORRES SJA is responsible for the complete processing of all show cause BOIs convened by COMMARFORRES, to include presenting the evidence to the BOI.

3006. OFFICER DISCIPLINARY NOTEBOOK (ODN). The MARFORRES SJA is responsible for the accurate and timely reporting of the monthly CMC ODN report in accordance with MCO P5800.16\_\_.



## MARFORRES LEGAL SOP

(Last Name, First Name, Middle Initial)  
(SSN/MOS)  
(Rank, Component)  
(Date of Rank)  
(Unit)  
(Marital Status)  
(Selected or Not Selected for Promotion)

Allegation(s): Wife of SNO reported to XXXX Marine Corps that SNO conducted an XYZ affair with a xxxxxxxxxxxxxxxxxx employee of MARFORRES. COMMARFORRES appointed an IO on day month year to complete a Preliminary Inquiry.

### SERVICE AND BACKGROUND:

- |                         |   |
|-------------------------|---|
| a. Date of Birth:       | 00 November 1900.   |
| b. Marital Status:      | Married.  |
| c. Civilian Education:  | 16 years.   |
| d. Date of Appointment: | 0 May 0000.   |
| e. Date of Rank:        | 0 May 1993.   |
| f. MOS:                 | 9999.   |
| g. Service Schools:     | See DE A (OQR) and<br>DE G (MCTFS/BTR).                     |
| h. Decorations/Awards:  | See DE A (OQR), DE F<br>MTFS/BIR), and DE G<br>(MCTFS/BTR). |
| i. Discipline History:  | None.   |

Figure 3-1 -- Sample Initial Complaint Report

MARFORES LEGAL SOP

UNIT LETTERHEAD

5800  
CODE  
Date

From: (CO/I-I/OIC)  
To: (Preliminary Inquiry Officer)

Subj: PRELIMINARY INQUIRY INTO THE CIRCUMSTANCES  
SURROUNDING THE ALLEGED MISCONDUCT

Ref: (a) Manual for Courts-Martial

1. This appoints you, per Rule for Courts-Martial 303 of reference (a), to inquire into the facts and circumstances surrounding the \*INCIDENT that occurred at \*LOCATION at \*TIME on \*DATE.
2. You will conduct a thorough inquiry and report your findings of fact, opinions and recommendations regarding how the subject incident occurred and the responsibility therefore, including any recommended administrative or disciplinary action. You are directed to consult with the Marine Forces Reserve Military Justice Officer before beginning your investigation.
3. Your report of preliminary inquiry will be forwarded to this Headquarters within twenty calendar days of the date of this appointing order. Submit your report to me, in naval letter format, no later than day month year, unless an extension of time is granted.

(CO/I-I/OIC)

MARFORRES LEGAL SOP

CHAPTER 4

MILITARY JUSTICE

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# MARFORRES LEGAL SOP

## CHAPTER 4

### MILITARY JUSTICE

4000. GENERAL. The rules governing courts-martial apply to both the regular and reserve components of the Marine Corps. However, due to the unique nature of reserve members and dispersion of this command, certain differences in the application of those rules make the MARFORRES military justice system unique. This chapter addresses those differences to ensure MARFORRES commanders understand what unique challenges must be overcome to apply the UCMJ to Marines within MARFORRES. All commanders and convening authorities are encouraged to communicate directly with the MARFORRES MJO regarding military justice issues.

4001. ANALYSIS OF MILITARY JUSTICE OPTIONS. Military justice is a leadership tool and a function of command. Every commander is encouraged to establish a command disciplinary program that includes utilization of non-punitive administrative measures, NJP, and courts-martial. While courts-martial are a key part of the command disciplinary program, they should be used as a last resort and only for those cases where all lesser forms of discipline have been considered and determined to be inadequate to address the alleged misconduct. Commanders should seek guidance from the MARFORRES MJO or SJA prior to imposing NJP or deciding to refer the case to a court-martial.

#### 4002. JURISDICTION

1. Jurisdiction is the power of a court to hear and determine a case and to render a binding judgment. In order for a court-martial to have jurisdiction over a servicemember, the servicemember must have been subject to the UCMJ at the time of the offense and also be subject to the UCMJ at the time of trial. Members of the regular component are always subject to the UCMJ. Whereas members of the reserve component are only subject to the UCMJ while serving on active duty, inactive duty for training, or when lawfully called or ordered to duty or training.

2. Since military courts are courts of limited jurisdiction, a convening authority cannot lawfully convene a court-martial absent jurisdiction over the Reserve servicemember at the time of the offense and the time of trial.

#### 4003. CONVENING AUTHORITIES

1. Paragraph 1001 of this SOP lists the officers within

MARFORRES who are GCMCA and SPCMCA. Paragraph 1001 also lists those commanders whose authority to convene courts-martial has been withheld in accordance with R.C.M. 306.

2. Per R.C.M. 306, a SPCMCA with command over another SPCMCA may withhold the subordinate's authority to convene SPCM. Nonetheless, the withholding of the exercise of SPCMCA does not affect the authority to convene summary courts-martial, promotion authority, NJP authority, or NJP reduction authority.

3. SPCMCA's and GCMCA's can exercise courts-martial jurisdiction over any member of the armed forces regardless of whether the servicemember is assigned to their command. For instance, a battalion I-I may exercise court-martial jurisdiction over Reserve Marines that are on the table of organization of the Reserve command. However, it is incumbent on the officer exercising jurisdiction over the case to coordinate with the commanding officer of the reserve or regular component Marine.

#### 4004. OFFICER MISCONDUCT

1. COMMARFORRES retains initial disposition authority over all cases involving officer misconduct. Immediately upon receipt of information that an officer committed an offense punishable under the UCMJ, the appropriate MSC CG will be notified. Additionally, all cases of officer misconduct must be reported to the MARFORRES, SJA as soon as practical to ensure that the CMC is notified in accordance with MCO P5800.16\_\_ (LEGADMINMAN).

2. All cases of officer misconduct will be forwarded up the chain of command with specific recommendations regarding disposition, to include Article 32 pretrial investigation, court-martial, NJP, relief for cause, or punitive censure. Additionally, comment should be made regarding whether or not the officer should be required to show-cause for retention at a BOI.

#### 4005. COMMAND ACTION IN RESPONSE TO MISCONDUCT

1. Upon receipt of information indicating that a servicemember committed an offense triable by court-martial, the immediate commander shall conduct a preliminary inquiry (P.I.) into the suspected offense(s). The P.I. enables the commander to make an informed decision on what action to take and what level of support to request from the MARFORRES SJA. In the case of minor offenses, commands should consult the provisions of Chapter 2 of this SOP. Serious offenses may require investigation by the Naval Criminal Investigative Service (NCIS) or a more formal command investigation. The focus of the investigation, whether a P.I. or command investigation, should be to provide the commander with sufficient information to assist him or her in understanding

the facts and circumstances surrounding the allegations so informed decisions regarding the appropriate administrative or disciplinary action can be made.

2. Per SECNAVINST 5430.107, within the Department of the Navy, NCIS is primarily responsible for investigating actual, suspected, or alleged major criminal offenses. A major criminal offense is defined as one punishable under the UCMJ by confinement for a term of more than 1 year. Incidents of actual or alleged major criminal offenses coming to the command's attention must be immediately referred to NCIS whether occurring on or off an installation or ship and regardless of whether they are being investigated by state, local, or other authorities. The referral to NCIS should be made before any substantive investigative steps are considered, unless such steps are necessary to protect life or property or to prevent the destruction of evidence. Seeking NCIS assistance must be coordinated with the MARFORRES MJO who will act as the liaison between the command and NCIS.

3. In addition, when any of the following circumstances occur, the command shall promptly forward available information to NCIS for investigation:

a. Any death occurring on a Navy or Marine Corps aircraft or installation.

b. Any fire or explosion of unknown origin affecting Department of the Navy property or property under the Navy or Marine Corps control.

c. Incidents involving loss of ordnance.

d. Thefts of minor amounts of personal property when ordnance, contraband, or controlled substances are involved.

e. Disappearance of a command member that may suggest foul play.

f. Incidents of aberrant sexual behavior involving force or coercion, or when children are involved.

#### 4006. REQUESTING MILITARY JUSTICE SUPPORT

1. If a commander desires that an incident of misconduct be disposed of at any level of courts-martial, a RLS must be submitted to the MARFORRES MJO. Figure 4-1 contains a sample format. No case within MARFORRES will be forwarded to any other MJO, LSSS, or Joint Law Center without the express consent of the MARFORRES SJA.

2. The RLS will be forwarded from the respective CA with a copy of all available documentary evidence, a copy of the accused's service record book, and the court-martial convening order. The RLS must specifically state whether the CA desires support for a summary court-martial, a SPCM, or an Article 32 hearing for possible referral to a GCM.

3. Commanders should not draft charge sheets, prefer charges, or refer charges to a court-martial. All charge sheets and charges concerning MARFORRES Marines or sailors will originate from the Military Justice Section.

#### 4007. CONVENING ORDERS

1. A convening order is the document that establishes a standing court-martial panel for a particular convening authority. Charges cannot be referred to a court-martial unless there is a preexisting convening order. Therefore, prior to referring charges to a court-martial, the CA must create a convening order. Assistance in creating a convening order is available from the MARFORRES Military Justice Section.

2. Each GCMCA and SPCMCA are encouraged to create standing convening orders, but are not required to do so until such time as one is required to refer charges.

3. The officer exercising court-martial CA must personally sign the convening order. The order will be ineffective if signed "By direction" or "Acting."

4. Figure 4-2 is a Sample Convening Order. GCM's require at least 5 officer members. SPCM's require at least 3 officer members. Enlisted members will not be placed on the original convening order. If an enlisted servicemember elects enlisted membership for his or her court-martial panel, an amended convening order will be made at that time.

5. Selection of Court-Martial Members. CAs must select court-martial members based on the criteria set forth in Article 25, UCMJ and R.C.M. 502. The members detailed to a court-martial shall be those persons who, in the opinion of the convening authority, are best qualified for the duty by reason of their age, education, training, experience, length of service, and judicial temperament. Selection of court-martial members based on other criteria such as rank, performance evaluation chain, race, religion, etc. subjects the case to dismissal by the military judge if he or she finds actual or apparent inequity in the member selection process. If challenged by the defense, CAs must be able to articulate the basis on which they selected the court-martial members. It is not uncommon for members on any



convening order to no longer be available at the time of trial due to operational commitments, release from active duty, or execution of permanent change of station orders. When this occurs, CAs can amend the convening order by adding new members, in accordance with the guidance above, and deleting members who are no longer available.

6. Once created, the original copy of all convening orders should be sent to the MARFORRES Military Justice Section for filing. A certified true copy should be kept on file at the local command.

4008. OBTAINING DETAILED MILITARY DEFENSE COUNSEL. The accused's right to a detailed military defense counsel attaches when charges are preferred or when pretrial confinement is imposed. It is the responsibility of the local commander to notify the MARFORRES Military Justice Section in order to ensure detailed military counsel is obtained in a timely manner.

4009. PRETRIAL RESTRAINT

1. When a servicemember is suspected of committing an offense under the UCMJ and a court-martial is considered, the CA is authorized to impose pretrial restraint. Pretrial restraint includes conditions on liberty, restriction in lieu of arrest, arrest, and confinement.

2. Probable cause is required before any form of pretrial restraint may be imposed. Additionally, a commander imposing pretrial restraint must have grounds to believe the degree of restraint imposed is required by the circumstances. Probable cause for the purpose of imposing pretrial restraint means that: (1) reasonable grounds exist for believing that an offense triable by court-martial was committed and (2) that the person sought to be restrained committed it. In cases where pretrial confinement is being considered, the following factors must also exist: (1) confinement is necessary because it is foreseeable that the accused will not appear at trial or the accused will engage in serious criminal misconduct and (2) less severe forms of restraint are inadequate.

3. The degree of restraint utilized should be the least amount that the commander believes necessary to ensure the Marine's presence at trial. Not all forms of pretrial restraint are available to Commanders within MARFORRES. For instance, many I-I's do not have enlisted quarters to house Marines they want to place on pretrial restriction, while others are not located near a confinement facility where pretrial confinement may be utilized.

4. Pretrial Restriction. Commanders can impose pretrial restriction in varying degrees. The options include restrictions on liberty, restriction in lieu of arrest, and arrest. The latter two differ only in that a person put under arrest is not permitted to perform military duties or bear arms. Whenever pretrial restriction is utilized, the commander must notify the Marine in writing. The notification must clearly state the nature of the alleged offenses and the form of restraint. Figure 4-3 is a sample pretrial restriction order.

5. Pretrial Confinement (PTC). The proper use of PTC is a command responsibility; therefore, MARFORRES commanders must know when and how to place servicemembers into pretrial confinement when it is warranted. A PTC Checklist and Order are provided in Figures 4-4 and 4-5 respectively.

a. Who May Order PTC. Any commissioned officer may order the pretrial confinement of an enlisted Marine, but normally the CO or I-I will give the order. However, if someone other than the I-I or CO orders the PTC, the commissioned, warrant, noncommissioned, or petty officer into whose charge the prisoner is placed must, within 24 hours after that commitment, provide a report to the commander identifying the prisoner, the offenses charged, and the name of the person who ordered or authorized the confinement. Figure 4-5 is a sample confinement order.

b. When a Servicemember May be Confined. Prior to placing a servicemember in PTC, or as soon thereafter as practical, the commander should contact the MJO for advice. In the absence of advice from the MJO, the commander must be aware that a servicemember cannot be confined as a matter of convenience or expedience, or as some type of pretrial punishment. Servicemembers may be ordered into pretrial confinement, only if there is a reasonable belief that:

(1) An offense triable by court-martial has been committed;

(2) The person to be confined committed the offense;

(3) Confinement is necessary because it is foreseeable that:

(a) The person to be confined will not appear at trial, pretrial hearing, or investigation; or

(b) The person to be confined will engage in serious criminal misconduct; and

(4) Less severe forms of restraint, such as restriction, are inadequate.

c. Advice to the Accused Upon Confinement. Each servicemember confined shall be promptly informed in writing of:

(1) The nature of the offenses for which the servicemember is being held (there is no requirement to have preferred charges prior to placing a servicemember in pretrial confinement);

(2) The right to remain silent and that any statement made by the servicemember may be used against the servicemember;

(3) The right to retain civilian counsel at no expense to the United States, and the right to request assignment of military counsel; and

(4) The procedure by which pretrial confinement will be reviewed.

6. Action by the Commander (72-Hour Memorandum). Not later than 72 hours after ordering the servicemember into PTC the commander shall decide whether PTC should continue. If continued pretrial confinement is approved, the commander shall prepare a written memorandum that explains how the requirements, as stated above, have been satisfied. This memorandum may include backup material, such as police reports and witness statements. After completing the memorandum, the commander should forward it to the Initial Review Officer (IRO). Figure 4-6 is a sample 72-hour memorandum.

7. Procedures for Review of PTC (7-day Review). Within 7 days of the imposition of confinement, a specifically appointed neutral and detached officer, the Initial Reviewing Officer (IRO), shall review the need for PTC. The IRO will be assigned to the hearing by the brig that has custody of the servicemember. The IRO will review the commander's 72-hour memorandum and any evidence presented by the defense counsel and a government representative, usually the unit's legal officer. Upon completion of review, the IRO shall either approve continued confinement or order the immediate release of the servicemember.

8. Failure to properly follow the specific requirements for PTC will result in the servicemember's release before trial or extra credit for days served while "illegally" confined. Absent exigent circumstances, guidance concerning pretrial confinement should be obtained from the Military Justice Section.

9. Confinement Facility. Normally, only confinement facilities governed by the Department of the Navy may be utilized to confine Marines and sailors assigned to MARFORRES. The web site for all Naval Corrections Facilities is:  
[www.persnet.navy.mil/pers8/p84/brigpg.htm](http://www.persnet.navy.mil/pers8/p84/brigpg.htm).

Note: The format for confinement orders, the commander's 72 hour memorandum, and IRO procedures may vary from one facility to another; therefore, the OIC of the proposed confinement facility should be contacted for guidance.

4010. LOCATION OF A COURT-MARTIAL OR ARTICLE 32. The officer convening the court-martial or Article 32 establishes the location. Although costs associated with the location of witnesses may be used as a consideration in determining the best location for a trial or Article 32 hearing, the CA must ensure the location selected does not adversely affect the accused's ability to present a proper defense.

4011. FUNDING COURTS-MARTIAL. The CO or I-I convening the court-martial or Article 32 investigation is responsible for all costs associated with the case. If, following the Article 32 pretrial investigation, charges are referred to a GCM, the MSC will be responsible for the remaining associated costs.

#### 4012. SEARCHES AND SEIZURE

1. Fundamentals. Military law recognizes that the individual's right of privacy is balanced against the command's legitimate interests in maintaining health, welfare, discipline, and readiness, as well as by the need to obtain evidence of criminal offenses. Searches and seizures conducted in accordance with the requirements of the United States Constitution will generally yield evidence that is admissible at trial. On the other hand, evidence obtained in violation of constitutional mandates will not be admissible in any later criminal prosecution, but may be admissible for administrative purposes.

2. Search. A search is a quest for incriminating evidence. That is, an examination of a person or an area with a view toward the discovery of contraband or other evidence to be used in a criminal prosecution. The law of search and seizure applies when: (1) there is a quest for evidence, (2) conducted by a government agent, and (3) there is a reasonable expectation of privacy in the area to be searched.

3. Seizure. A seizure is the taking of possession of a person or some item of evidence in conjunction with the investigation of criminal activity. The act of seizure is separate and distinct from the search; the two terms vary significantly in legal effect.

4. Power to Authorize. A commander or any other person serving in a position of command, for example an OIC, who has control over the place where the property or person to be searched is

situated or found, or, if that place is not under military control, having control over persons subject to military law or the law of war can authorize a search. Commanders authorizing a search based upon probable cause should use JAGMAN A-1-n(1) as a guide to record their decision authorizing the search.

5. Basis for Search Authorization. A search authorization must be based upon probable cause. Probable cause exists when there is a reasonable belief that the person, property, or evidence sought is located in the place or on the person to be searched.

6. Power to Search. Any commissioned officer, warrant officer, petty officer, noncommissioned officer, other servicemember in the execution of guard or police duties, or any criminal investigator may conduct a search when a search authorization has been granted or is otherwise appropriate.

7. Exigencies - Probable Cause Searches without Authorization. A search authorization is not required for a search based upon probable cause where:

a. There is a reasonable belief that the delay in obtaining a search authorization would result in removal, destruction, or concealment of the property or evidence sought.

b. There is a reasonable military operational necessity that is believed to prohibit or prevent communication with a person empowered to grant a search warrant or authorization, and there is a reasonable belief that the delay in obtaining a search authorization would result in removal, destruction, or concealment of the property or evidence sought.

c. An operable vehicle is to be searched.

8. Searches not Requiring Probable Cause. The following searches, if reasonable, do not require probable cause or a search authorization.

a. Searches upon entry to or exit from United States installations, aircraft, or vessels abroad.

b. Government property. Generally, government property may be searched and seized for any reason or no reason because there is a presumption that no privacy expectation attaches. However, the presumption is overcome if the person to whom the property is issued or assigned has a reasonable expectation of privacy therein at the time of the search. A person does not have a reasonable expectation of privacy in government property that is not issued for personal use, e.g., Government desks or computers. Whereas wall lockers and footlockers in personal living quarters

are normally issued for personal use and cannot be search without probable cause and a search authorization. Government email accounts are also considered personal use items and a reasonable expectation of privacy attaches.

c. Consent Searches. Searches may be conducted of any person or property with lawful consent. However, to be valid, consent must be voluntary. A servicemember voluntarily consents when there is no coercion or influence or rank, and the servicemember understands his rights to refuse the search. If a free and voluntary consent is obtained there is no requirement for probable cause or a search authorization. That being the case, the person conducting the search should first seek consent even if he or she has a search authorization and probable cause exists. If more than one person has control over property or the place to be searched either can authorize the search of the whole. For example, a military spouse can authorize the search of on-base quarters even though the command is seeking evidence against the military member. JAGMAN Appendix A-1-o provides a sample Consent to Search form for use by commanders.

d. Searches Incident to Lawful Apprehension. A search of an individual's person, of the clothing he is wearing, and of places into which he could reach to obtain a weapon or destroy evidence is a lawful search if conducted incident to a lawful apprehension of that individual.

9. Inspections and Inventories. Inspections and inventories are not searches and evidence discovered and seized as a result of a legitimate inspection or inventory is admissible at trial regardless of whether probable cause exists.

a. Inspections. An inspection is an examination conducted as incident of command where the primary purpose is to determine and ensure the security, military fitness, or good order and discipline of the unit, organization, installation, vessel, aircraft, or vehicle. Since inspections are intended to discover, correct, and deter conditions detrimental to military efficiency and safety they are considered necessary to the existence of any effective armed force and inherent in the very concept of a military organization. Therefore, probable cause is not required for a commander to conduct an inspection of the personnel or military property of his or her unit. On the other hand, an examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inspection within the meaning of this rule. But, an otherwise valid inspection is not rendered invalid solely because the inspector has as his or her secondary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings.

b. Inventories. The Military Rules of Evidence recognize that evidence seized during a bona fide inventory is admissible at trial without the requirement for a search authorization or probable cause. The rationale behind this exception to the requirement for probable cause is that such an inventory is not prosecutorial in nature and is a reasonable intrusion. Therefore, commands may inventory the personal effects of members who are in an unauthorized absence status, placed in pretrial confinement, or hospitalized. Contraband or evidence incidentally found during the course of such a legitimate inventory will be admissible in a subsequent criminal proceeding; however, an inventory may not be used as a subterfuge for a search.

10. Objects Subject to Search or Seizure. In carrying out a lawful search or seizure, agents of the government are bound to look for and seize only items that provide some link to criminal activity. For example, the following categories of evidence may be seized if discovered during a lawful search, inspection, inventory, etc.:

- a. Weapons made unlawful by some law or regulation.
- b. Contraband or items that may not legally be possessed.
- c. Evidence of crime, which may include such things as instrumentalities of crime, items used to commit crimes, fruits of crime (such as stolen property), and other items that aid in the successful prosecution of a crime.
- d. Persons, when probable cause exists for apprehension.
- e. Abandoned property, which may be seized or searched for any or no reason, and by any person.

4013. CONFESSIONS AND ADMISSIONS. As a general rule, commanders are encouraged to use NCIS agents or other available military investigators to question military suspects. However, when support of military investigators is not available, investigating officers planning to interview a military suspect should refer to Chapter 6 of this SOP and use the form provided at Figure 6-12 of this SOP and Appendix A-1-m of the JAGMAN. To ensure the suspect's confession or admissions are admissible in a later court-martial, the form must be completed prior to questioning or requesting a statement from a military suspect. If a suspect asserts his or her right to remain silent or requests to speak to an attorney, questioning must cease immediately. It is highly recommended that the MARFORRES Military Justice Section be contacted for advice prior to questioning military suspects.

4014. POST-TRIAL PROCESSING

1. General. Post-trial processing of courts-martial is an extremely important part of the command disciplinary program and absolutely necessary for maintaining good order and discipline. The only adjudged punishment that is effected immediately after trial is confinement, unless deferred. All other punishments do not take effect until either day 14 after the trial, the convening authority takes his post-trial action, or appellate review is complete. Through taking CA's action (CAA's), the CA ensures the adjudged punishments are enforced in accordance with the MCM.

2. Results of Trial. Following the announcement of the sentence and the conclusion of trial, the trial counsel will create the Report of Results of Trial, submit it to the CA, and ensure the report is made a part of the record of trial. The report will include the findings, sentence, and the terms of any pretrial agreement.

3. Confinement. When a convicted servicemember's sentence includes confinement, the servicemember's command must take immediate steps to confine him or her. If the accused is not being held in the brig during trial, then two command representatives (equal rank or higher to the accused) must escort the accused to the designated place of confinement. If the accused is being taken back to the brig (i.e., confined during trial) then only certified chasers from the command may escort the accused to or from the place of confinement. Chasers and command representatives must liaison with the confinement facility concerning required documents, (i.e., confinement order, physical exam, clothing, personal affects, etc.)

4. Effective Date of Forfeitures and Reduction. Forfeitures of pay or allowances, and reduction in grade that is included in a sentence of a court-martial take effect on the earlier of 14 days after the date that the sentence is adjudged, or the date the convening authority approves the sentence.

5. Automatic Forfeitures. If a person is confined post-trial, automatic forfeitures take effect regardless of the actual sentence adjudged by the court-martial. The automatic forfeitures take effect on the earlier of 14 days after the date on which the sentence is adjudged or the date on which the convening authority approves the sentence.

a. SPCM. A servicemember sentenced to confinement at a SPCM automatically forfeits two-thirds of all pay and allowances during his or her period of confinement if the sentence adjudged includes either confinement for greater than 6 months or any period of confinement and a bad conduct discharge (BCD).



b. GCM. A servicemember sentenced to confinement at a GCM automatically forfeits all pay and allowances during his or her period of confinement if the sentence adjudged includes either confinement for greater than 6 months or any period of confinement and a BCD, dishonorable discharge, or dismissal.

6. Automatic Reduction. Reduction to the lowest enlisted pay grade will be effected automatically when the sentence, as approved by the CA, includes either a punitive discharge, confinement in excess of 90 days (if the sentence is awarded in days), or confinement in excess of three months (if the sentence is awarded in months).

7. Deferment of Adjudged and Automatic Forfeitures and Reduction. On application by the accused, the CA may defer the effective date of adjudged and/or automatic forfeitures and reduction until the date the CA approves the sentence. If the convicted servicemember requests a deferment, the CA should contact the Military Justice Section for advice.

8. Waiver of Automatic Forfeitures. In the case of an accused with dependents, the CA, at his discretion and without a request from the accused, at the time he takes his action on the sentence, may waive any portion or all of the automatic forfeitures for up to 6 months. If the automatic forfeitures are waived, the money shall be paid by an involuntary allotment to the servicemember's dependents.

9. Confinements and Deferment. The sentence of confinement begins to run on the date the sentence is announced, unless the sentence is deferred. Only the CA may defer confinement and his or her authority cannot be delegated. When taking action on a deferment request, the denial must be in writing, yet approval may be verbal. The request and response must also be forwarded to the MARFORRES SJA for inclusion in the Record of Trial.

#### 4015. APPELLATE LEAVE

1. General. In all cases in which a punitive discharge is awarded and subsequently approved by the CA, the Navy-Marine Corps Appellate Review Activity (NAMARA) must review the case prior to the execution of the punitive discharge. This mandatory appellate review can take up to 24 months from the date of trial. It is not uncommon for a convicted servicemember to have served his period of confinement prior to the CA acting on the adjudged sentence or the punitive discharge being approved by NAMARA. MCO 1050.16 provides detailed guidance for leave while awaiting the CAA's or the decision of appellate review by NAMARA.

2. Voluntary Appellate Leave. Per MCO 1050.16\_, only a GCMCA may grant voluntary appellate leave. A convicted servicemember cannot be placed on appellate leave without his or her consent prior to the CA taking final action on the case, i.e., CAA's. However, an accused may submit a written request for voluntary appellate leave awaiting CAA's after serving his or her period of confinement. See MCO 1050.16\_ for specific guidance.

3. Involuntary Appellate Leave. Upon the CA approving a punitive discharge resulting from a SPCM or a GCM, the first GCMCA in the chain of command can place the convicted servicemember on involuntary appellate leave. If the convicted servicemember is already on voluntarily appellate leave, his or her leave status will be changed to involuntary appellate leave upon CAA's. When the command changes the servicemember's leave status it must send written notification to the Marine of the change in appellate leave status. Regardless of whether the case was a GCM or SPCM, only a GCMCA may direct a servicemember sentenced by a court-martial to dismissal or punitive discharge to involuntary appellate leave, and it may only be done after the respective CA has taken action on the case approving the punitive discharge.

4. All requests for voluntary appellate leave and orders directing involuntary appellate leave must be forwarded to the MARFORRES Military Justice Section. Once approved, the commander of the servicemember will ensure that the procedures set forth in MCO P1050.3\_ and MCO 1050.16\_ have been completed.

#### 4016. DISCLOSURE OF DISCIPLINARY MATTERS

1. Information that relates to pending disciplinary matters, specifically NJP or courts-martial, will not be released by servicemembers or commands without authorization from the MARFORRES Public Affairs Officer.

2. Publishing Results of Courts-Martial. COs are encouraged to publish the results of courts-martial to their commands. Only results in which there are findings of guilty may be published. An announcement of the name of the accused, the offenses of which the accused was found guilty, and the sentence is appropriate. See paragraph 0115 of the JAGMAN regarding publishing the results of cases resolved at NJP.

#### 4017. VICTIM AND WITNESS ASSISTANCE PROCEDURES

1. MARFORRES's Policy. The MARFORRES policy regarding victim and witness assistance is to provide the best possible protection and assistance to crime victims and witnesses without infringing upon the Constitutional rights of the accused. The goal is to

mitigate, within the means of available resources and in accordance with applicable law, the physical, psychological, emotional, and financial hardships suffered by victims of crimes, while fostering cooperation by victims and witnesses.

2. Victim Assistance. All unit commanders, shall investigate and determine what victim assistance facilities and agencies are available within the local community, make liaison with them, and reach agreements regarding their availability to military personnel (both regular and reserve component) and their dependents. All victims, when circumstances dictate, should be informed promptly of the availability of emergency medical and social care, chaplain assistance, and be provided assistance in securing such care. See Force Order 5800.2\_ for specific appropriate response procedures pertaining to: (1) sexual or indecent assault cases; (2) family violence or neglect; and (3) alcohol/drug related vehicle accidents. Also see Force Order 5800.2\_ for information that all units must ensure victims/witnesses are provided.

### 3. Sexual Assault Cases

a. If victim is a member of the command, immediately contact the command victim/witness assistance coordinator (CVWAC). The CVWAC will coordinate with the area Sexual Assault Response Coordinator (SARC) or Family Service Center if no SARC exists in the area. The victim must be afforded the opportunity to consult with these services if requested.

b. The CVWAC should take appropriate steps to ensure the victim is aware of his/her rights. Some of the victim's rights include to be informed of the current status of the case/investigation, the location of the accused, and the opportunity to confer with government counsel on possible plea bargains between the CA and the accused. It is highly important to allow the victim to be involved in the case if he/she so chooses to take part. The entire list of victim's rights can be found in Force Order 5800.2\_.

c. There are several ways to make an initial report of a sexual assault. Depending on whether the victim chooses to make a "Restricted" or "Unrestricted" report, he/she has reporting options. Under restricted reporting, a victim can make a report confidentially to a Victim Advocate (VA), Uniformed Victim Advocate (UVA), or a Chaplain. In unrestricted reporting, the victim may report to any command personnel, PMO, NCIS, legal, VA, UVA, Chaplain, SARC, or specified healthcare provider. Both DoD policy and MCO 1752.5\_ allow sexual assault victims to make a restricted report. Restricted reporting allows a victim to obtain the necessary medical, counseling, and mental health services without reporting to law enforcement.

4. Dissemination. SPCMCA's shall establish procedures for the dissemination of the above described information to victims and witnesses.

5. Sexual Assault Information Reporting Database (SAIRD). Upon confirmation of an unrestricted sexual assault, the command needs to report the case to MARFORRES SJA. Per MCO 1752.5\_, SJAs are responsible for entering the information into SAIRD. These include all reported cases to NCIS, PMO, and Command representation. However, it excludes all confidential ("restricted") reports made to Marine and Family Services personnel (counselors/victim advocates) and chaplains.

MARFORRES LEGAL SOP

UNIT LETTERHEAD

5811  
Code  
Date

From: Commanding Officer/Inspector-Instructor  
To: Commander, Marine Forces Reserve (SJA)

Subj: REQUEST FOR LEGAL SERVICES (RLS)

Encl: (1) Copy of Preliminary Inquiry  
(2) Copy of Evidence  
(3) Copy of Accused's Service Record Book  
(4) Copy of Admin Discharge Package (if applicable)  
(5) Full name, rank and service component of Court-Martial members.

1. Request legal services for:

a. Trial by summary court-martial. The summary court martial officer is: Captain I. M. BAD 123 45 6789/0000 USMC(R), UNIT; or

- b. Trial by special court-martial; or
- c. Article 32, pretrial investigation

2. Should the accused submit a request to be separated with an other than honorable discharge in lieu of trial by special or general court-martial, I would recommend approval/disapproval. (This paragraph only applies to an RLS for a court-martial).

3. Name of Officer who will refer charges to a court-martial.

4. The personal data of the accused is as follows:

- a. Sgt I. M. Nailed 123 45 6789/0000 USMC(R).
- b. Unit to which accused is assigned.
- c. Date of current enlistment and term.  
EAS/ECC. Date accused placed on legal hold, if applicable.
- d. Basic pay.

5. Nature of pretrial restraint and date imposed, if applicable.

6. Point of contact at the unit including grade, name and telephone number.

Signature

MARFORRES LEGAL SOP

UNIT LETTERHEAD

Date

SPECIAL COURT-MARTIAL CONVENING ORDER 1-XX (last two digits of the year).

Pursuant to the authority in Uniform Code of Military Justice Article 23(a), Rule for Courts-Martial 504(b)(2), Manual of the Judge Advocate General of the Navy 0120(b), and Marine Forces Reserve Order P5800.6\_, a Special Court-Martial (SPCM) is hereby convened to hear all cases properly referred to it. The SPCM may proceed at San Bruno, California, or any other site as directed. The court will be constituted as follows:

MEMBERS:

Colonel David R. Chevy, USMCR (AR);  
Lieutenant Colonel Nora S. Hawk, USMC;  
Lieutenant Colonel Rickie L. Morken, USMCR (AR);  
Lieutenant Colonel Scott E. Walker, USMCR (AR);  
Major Marcus J. Teller, USMCR (AR);  
Captain John D. Wilksberry, USMC; and  
Chief Warrant Officer 3 Judith A. Smith, USMC.

J. L. RYAN  
Colonel  
U.S. Marine Corps  
Commanding

Copy to:  
Files  
SJA, MarForRes

MARFORRES LEGAL SOP

UNIT LETTERHEAD

5811  
Code  
Date

From: Commanding Officer, Naval Air Station  
To: (Rate, name, armed force, social security number)

Subj: PRETRIAL RESTRICTION ORDER

Ref: (a) R.C.M. 306, MCM (2002 Edition)  
(b) R.C.M. 202(c)(1) and (2), MCM (2002 Edition)  
(c) R.C.M. 204, MCM (2002 Edition)

1. Per references (a) through (c), you are hereby placed on pretrial restriction as a Marine pending charges for alleged violations of the Uniform Code of Military Justice (UCMJ) to wit: [state the charges]

2. You are hereby notified that the restriction limits and additional requirements are as follows: [Add or delete conditions as required.]

a. You are required to remain within the perimeter and gates of the Naval Air Station, Wonderful, Florida.

b. You are not permitted in the Consolidated Package Store, Mini-Mart, bowling alley, Enlisted Men's Club Complex, or Navy Exchange Cafeteria, or anywhere else on base that sells alcoholic beverages.

c. While you are on restriction, you may not operate a privately owned vehicle.

d. You are to be inside the barracks between the hours of 1900 and 0600 daily.

e. You are hereby ordered to muster at the Discipline Barracks at the following times:

Workdays (including Saturday): 0615, 0745, 1130, 1245, 1600, 1800, 2000, 2145.

Non-workdays (Sundays and holidays): 0715, 1000, 1130, 1400, 1600, 1800, 2000, 2145.

f. You are required to be in the complete uniform of the day at all times between reveille and taps. You are not permitted to be in civilian clothes at any time.

MARFORRES LEGAL SOP

You are hereby notified that all the above constitute lawful orders and that failure to comply is a violation of the Uniform Code of Military Justice and will subject you to disciplinary action. This order will remain in effect indefinitely at my discretion.

I. M. SMITH

I acknowledge this restriction order. I have read and understand its content. (Signature of restricted person)

Figure 4-3 -- Sample Pretrial Restriction Order



## MARFORRES LEGAL SOP

### PRETRIAL CONFINEMENT CHECKLIST

1. \_\_\_\_\_ Commander believes he has basis to impose PTC under the requirements set for at paragraph 4009 of this SOP and R.C.M. 305 of the MCM (2002). This would include the ability of the commander to articulate why lesser forms of restraint; e.g., restriction, would not be an appropriate way to ensure the accused presence at trial.
2. \_\_\_\_\_ If time permits, OSJA, MARFORRES consulted for advice, or if MARFORRES officer to be confined, COMMARFORRES grants authority to impose PTC.
3. \_\_\_\_\_ Confinement order is completed and signed by commander imposing PTC.
4. \_\_\_\_\_ Respective naval brig facility is contacted for instructions regarding what documentation and gear the prisoner will need to be accepted. Note: The detention facilities of another service may be utilized if the facility agrees to accept the prisoner.
5. \_\_\_\_\_ Prisoner is delivered to brig under military chaser escort.
6. \_\_\_\_\_ A RLS is submitted to the OSJA, MARFORRES and a Request for Defense Services is sent to the nearest military defense counsel's office. These requests should include all information regarding the imposition of PTC.
7. \_\_\_\_\_ Contact is made with the Brig's IRO to ensure a PTC Hearing will be conducted within the first 7 days of PTC.
8. \_\_\_\_\_ Within 48 Hours, the unit commander or I-I who imposed PTC must consider if PTC is to continue and issue a written explanation of why PTC should continue. The Brig's Initial Review Officer must receive this letter within 72 hours of initiating PTC.
9. \_\_\_\_\_ The unit ensures a command representative attends the IRO hearing on behalf of the command (Note: CO should not attend if he/she is going to be the CA on the case). This person will be required to "argue" the command's position that PTC should continue. Although an officer should be assigned, it is not a requirement.

## MARFORRES LEGAL SOP

CONFINEMENT ORDER			
1. PERSON TO BE CONFINED			2. DATE (YYYYMMDD)
a. NAME (Last, First, Middle)		b. SSN	
c. BRANCH OF SERVICE	d. GRADE	e. MILITARY ORGANIZATION (From):	
TYPE OF CONFINEMENT			
3.a. PRE-TRIAL <input type="checkbox"/> NO <input type="checkbox"/> YES		b. RESULT OF NJP <input type="checkbox"/> NO <input type="checkbox"/> YES	
c. RESULT OF COURT MARTIAL: <input type="checkbox"/> NO <input type="checkbox"/> YES			
TYPE: <input type="checkbox"/> SCM <input type="checkbox"/> SPCM <input type="checkbox"/> GCM <input type="checkbox"/> VACATED SUSPENSION			
d. DNA PROCESSING <input type="checkbox"/> IS <input type="checkbox"/> IS NOT REQUIRED UNDER 10 U.S.C. 1555.			
4. OFFENSES/CHARGES OF UCMJ ARTICLES VIOLATED:			
5. SENTENCE ADJUDGED:			b. ADJUDGED DATE (YYYYMMDD):
6. IF THE SENTENCE IS DEFERRED, THE DATE DEFERMENT IS TERMINATED:			
7. PERSON DIRECTING CONFINEMENT			
a. TYPED NAME, GRADE AND TITLE:		b. SIGNATURE	c. DATE (YYYYMMDD)
d. TIME			
B.a. NAME, GRADE, TITLE OF LEGAL REVIEW AND APPROVAL		b. SIGNATURE:	c. DATE (YYYYMMDD)
MEDICAL CERTIFICATE			
9a. The above named inmate was examined by me at _____ on _____ and found to be <input type="checkbox"/> Fit <input type="checkbox"/> Unfit (Time) (YYYYMMDD) for confinement. I certify that from this examination the execution of the foregoing sentence to confinement <input type="checkbox"/> will <input type="checkbox"/> will not produce serious injury to the inmate's health.			
b. The following irregularities were noted during the examination (If none, so state):			
c. HIV Test administered on (YYYYMMDD): _____			
d. Pregnancy test administered on (YYYYMMDD): _____ <input type="checkbox"/> N/A			
10. EXAMINER			
a. TYPED NAME, GRADE AND TITLE:		b. SIGNATURE	c. DATE (YYYYMMDD)
d. TIME			
RECEIPT FOR INMATE			
11.a. THE INMATE NAMED ABOVE HAS BEEN RECEIVED FOR CONFINEMENT AT: _____ (Facility Name and Location)			
ON _____ AND TIME: _____ (YYYYMMDD) (Time)			
b. PERSON RECEIPTING FOR INMATE TYPED NAME, GRADE AND TITLE:		c. SIGNATURE:	d. DATE (YYYYMMDD)
e. TIME			

DD FORM 2707, SEP 2005

PREVIOUS EDITION IS OBSOLETE.

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Figure 4-5 -- Sample Confinement Order

MARFORRES LEGAL SOP

UNIT LETTERHEAD

5811  
Code  
Date

From: Commanding Officer  
To: Initial Review Officer, NTS, Great Lakes, Illinois  
Subj: PRETRIAL CONFINEMENT ICO CWO4 JOHN B. BAD 987 65 4321  
USMCR (AR)

Ref: (a) R.C.M. 305, MCM (2005 Edition)  
(b) SECNAVINST 1640.10

Encl: (1) Pretrial Confinement Order  
(2) Copy of OQR

1. In accordance with references (a) and (b), the following information is provided for the purpose of conducting a hearing into the pretrial confinement of CWO4 Butler.

2. Hour, date and place of PTC: The CO ordered SNO into PTC on 30 September 2002, name and address of brig. Enclosure (1) is the confinement order.

3. Offenses Charged:

a. Violation of UCMJ, Article 92: Willful dereliction of duty, in that SNO did not properly destroy classified information, as was his duty to do.

b. Violation of UCMJ, Article 121: Larceny of government property in that SNO did unlawfully government property, to wit: numerous classified documents and a government lap top computer.

c. Violation of UCMJ, Article 133: Conduct Unbecoming and Officer and a Gentlemen in that SNO did misrepresent to II MACE that he had properly destroyed the classified information and then stored said material at his home before improperly burning it in his backyard, said conduct being a serious compromise of SNOs standing as an officer and also of a nature to be disgrace to the armed forces.

4. General Circumstances: SNO was placed in pretrial confinement after he: (1) suddenly cleared out a personally owned storage shed that only he had access to and which allegedly contained other classified information, and (2) after he had indicated to his civilian employer that he was leaving immediately to look for another job. Both of these incidents occurred within hours of each other.

5. Previous disciplinary action: SNO was previously the subject of NJP for wrongful use of his government credit card. He was not the subject of a Board of Inquiry as the result of this incident.

MARFORRES LEGAL SOP

6. Upon review of the circumstances surrounding the allegations, it is my opinion that there is cause to order a continuation of pretrial confinement in this matter for SNO. I have a reasonable belief that SNO committed the above-mentioned violations of the articles of the UCMJ. I have also determine that based on SNCOs demonstrated willingness to mishandled classified information he poses a threat to national security absent a finding that he no longer possesses such classified material. Although this has not as of yet been confirmed, NCIS has already seized a substantial amount of classified information from his home. Additionally, SNOs sudden cleaning out his storage shed and notification to his employer are clear indications to me that he did intend to flee the area to avoid prosecution for these charges. It should be noted that SNO recently relocated from his home of record and refused to give his new address or phone number to this command. We were forced to communicate with SNO through his civilian attorney.

7. As required by RCM 305, I have considered lesser forms of restraint but determined that lesser forms of restraint would be inadequate to ensure SNO appears at any future hearings, and to ensure there are no future compromises of classified information or further violations of the UCMJ.

C. O. MANDER

Figure 4-6 -- Sample 72-Hour Memorandum

# MARFORRES LEGAL SOP

## CHAPTER 5

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# MARFORRES LEGAL SOP

## CHAPTER 5

### ENLISTED ADMINISTRATIVE DISCHARGES

#### 5000. GENERAL

1. Administrative discharges for which COMMARFORRES and the Commanding Generals of 4<sup>th</sup> MarDiv, 4<sup>th</sup> MLG, 4<sup>th</sup> MAW, and MOBCOM, are the discharge authorities will follow MCO P1900.16 (MARCORSEPMAN); MCO P1001R.1 (MCRAMM); and this SOP, which may impose more detailed or restrictive requirements than the MARCORSEPMAN or the MCRAMM.

2. Effective 1 September 2001, all involuntary administrative discharges are initiated, tracked, reviewed, and forwarded to the separation authority using the Marine Corps Enlisted Administrative Separation System (MCEAS). MCEAS is an automated system that may be accessed through the MARFORRES intranet. The MCEAS webpage, <http://rnet.mfr.usmc.mil/hq/sja/mceas/index.htm>, explains the MCEAS process, and is a short-cut to access the system. A user manual is also available in MCEAS. The user manual offers step-by-step instruction on how to initiate and process an enlisted administrative separation. For more information on MCEAS, consult the OSJA, MARFORRES.

5001. POLICY. Commanders at all levels will maintain unit readiness by establishing high standards of performance and conduct through training, motivation, and leadership. CO's and I-I's must identify Marines whose performance or conduct is substandard. If these Marines will not or cannot meet required standards of conduct or performance, they will be promptly processed for administrative discharge.

#### 5002. COMMAND RESPONSIBILITY AND COUNSELING

1. Periodic Review of Service Records. The commander should review each Marine's record to determine if counseling or processing for administrative discharge is desired or required when the Marine:

- is the subject of an offense report or disciplinary action;
- receives an adverse page 11 counseling entry;
- is involved in civilian criminal activity;

- tests positive on a urinalysis or is otherwise identified as possessing, distributing, or using illegal drugs (mandatory processing);
- is involved in an alcohol-related incident;
- has failed to support his dependents or pay just debts;
- receives unsatisfactory proficiency/conduct marks or an adverse fitness report
- is the subject of an adverse finding at military traffic court; or
- receives orders to detach from the command.

2. Missed Drills. Experience has shown that most Marines respond to leadership and counseling when they have a problem. The time to address the problem of missed drills is when the Marine initially begins missing them. At that time, the CO must determine why the Marine is missing drills and explain to the Marine his duty to attend training; to notify the unit in advance when he has a conflict with scheduled training; and to arrange for alternate training when he is excused from scheduled training. If leadership and corrective measures fail to secure the Marine's attendance at drill, the CO must take administrative action under paragraph 5200 of this SOP.

3. Administrative Separation Counseling. Counseling requires the following steps:

a. STEP ONE: When is counseling required? See Table 6-2 of the MARCORSEPMAN, note 4.

b. STEP TWO: How to document counseling? When required as a prerequisite for administrative discharge, counseling is **WORTHLESS** unless it is **PROPERLY** documented in the Marine's SRB. Use the format in paragraph 4006 of the IRAM (MCO P1070.12\_), vice the general format in the MARCORSEPMAN. To ensure that entries are consistently correct, each command should have a standard form or stamp for counseling entries which meet the IRAM's requirements.

c. STEP THREE: How long must the Marine be given to overcome the deficiencies noted in the counseling entry? The Marine must be given a "reasonable opportunity." A commander must determine, on a case-by-case basis, what is "reasonable." See paragraph 6105.3, MARCORSEPMAN.

d. STEP FOUR: Has the Marine overcome the deficiencies noted in the counseling entry? A commander must determine, on a case-by-case basis, if the deficiencies are overcome after the Marine was counseled. A commander may determine that the Marine has not overcome the deficiency even if the Marine's continued poor conduct or performance after the counseling does not result in disciplinary action.

e. STEP FIVE: What if the Marine does not overcome the deficiencies noted in the counseling entry? The command may process the Marine for discharge if (1) the Marine fails to overcome deficiencies and (2) the command documents the failure. This may be done when the following events occur after counseling:

EVENT	HOW TO RECORD
NJP	UPB
Court-martial	Page 13 entry
Civilian conviction	Page 11 entry
Misconduct with no NJP or conviction	Command recommendation

Additionally, the counseling entry must reasonably relate to the specific basis for the discharge recommendation. For example, do not process a Marine for pattern of misconduct if the only counseling entry concerned weight control. See paragraph 6105.5, MARCORSEPMAN.

5003. SJA RESPONSIBILITY. The SJA MARFORRES has staff cognizance and responsibility for advising and assisting CO's and I-I's about the following involuntary administrative discharges:

- a. Unsatisfactory participation in the Ready Reserve;
- b. Misconduct;
- c. Homosexual conduct;
- d. Unsatisfactory performance;
- e. Weight control failure;
- f. Convenience of the government;
- g. Fraudulent enlistment;
- h. All other involuntary enlisted administrative discharges if the Marine has six or more years of total active and Reserve service.
- i. Requests for designation as, or discharge for, conscientious objection;
- j. Discharge in lieu of trial by court-martial; and
- k. All involuntary separations of officers.

5004. JA REVIEW. Discharges are reviewed by a JA for legal and factual sufficiency as required by paragraph 6308.1c of the MARCORSEPMAN. The OSJA administrative separation officer conducts this review for all MARFORRES commands. Improperly prepared discharge proceedings will be returned to the command for correction.

5005. PROCESSING TIME GOALS. Paragraph 6102 of the MARCORSEPMAN establishes processing time goals. Prompt forwarding, review, and decision on all administrative discharges will enhance the overall effectiveness of the unit concerned. Accordingly, every attempt will be made to meet the goals in the MARCORSEPMAN. Command letters and endorsements should comment on any delays encountered in processing a discharge.

# MARFORRES LEGAL SOP

## CHAPTER 5

### ENLISTED ADMINISTRATIVE DISCHARGES

#### SECTION 1: ADMINISTRATIVE MATTERS

##### 5100. INITIATING ACTION

1. Ascertain the Status of the Respondent. Prior to processing an enlisted Marine for involuntary administrative separation, the command must first determine the status of the Marine:

- a. Active or Reserve;
- b. If Reserve--SMCR or IRR;
- c. If SMCR--obligor or non-obligor;
- d. Amount of active and inactive service; and

e. Proximity to expiration of active service, current contract, and eligibility for transfer to the Fleet Marine Corps Reserve (FMCR) or retirement. **SEE MARCORSEPMAN, PARAGRAPH 6106.4, IF THE RESPONDENT IS ELIGIBLE FOR RETIREMENT OR TRANSFER TO THE FMCR.**

2. Holding Beyond Release Date. A Marine may not be held on active duty involuntarily beyond his or her release date for administrative discharge. See paragraph 1008 of the MARCORSEPMAN. Similarly, a member of the IRR or SMCR may not be held beyond their end of current contract (ECC) or end of obligated service (EOS) for administrative discharge.

3. Marine eligible or within 2 years of eligibility for retirement or transfer to the FMCR. See paragraphs 6106 and 6307 of the MARCORSEPMAN.

4. Eligibility of SMCR Marine to transfer to IRR.

a. Mandatory Participants in the SMCR. An SMCR member with a mandatory participation requirement ("obligor") will be retained in the SMCR for administrative discharge. See paragraph 3301 of the MCRAMM. **DO NOT** transfer such a Marine to the IRR without prior MARFORRES approval.

b. Non-Mandatory Participants in the SMCR. An SMCR member without a mandatory participation requirement ("non-obligor") and

not subject to a separate written agreement to train (SWAT, MCRAMM, paragraph 3102) **CANNOT** be retained involuntarily in the SMCR for administrative separation. See paragraph 3301.2b, MCRAMM. If a non-obligor pending administrative discharge requests transfer to the IRR, such transfer must be approved. The SMCR command must then contact the SJA MARFORRES and MOBCOM.

5. Review the MARCORSEPMAN. Review these paragraphs for:

a. Information about the Specific Basis for Discharge. For example, in a drug abuse case, review paragraph 6210.5, MARCORSEPMAN. Chapter 6, section 2 of the MARCORSEPSMAN lists 13 general basis for separation from the Marine Corps. Commanders should understand the basis and requirements necessary to separate Marines.

b. Mandatory Processing. Mandatory processing is required for drug abuse (paragraph 6210.5); homosexual conduct (paragraph 6207); some types of sexual harassment (paragraph 6210.8); and participation in supremacist or extremist organizations or activities (paragraph 6210.9). Mandatory **processing** is not mandatory **discharge**; see paragraph 6001.3, MARCORSEPMAN.

c. Limitations on Discharge. See paragraph 6106, MARCORSEPMAN, for limits on discharge.

d. Limitations on Characterization of Service. See paragraph 1004.4, MARCORSEPMAN, for limits on characterization of service. Especially important are paragraph 1004.4a and b (prior service and preservice activities) and paragraph 1004.4d (conduct in the civilian community by a Reservist not in a duty status).

e. Identify the Separation Authority

(1) In General. COMMARFORRES and the CGs of the 4<sup>th</sup> MarDiv, 4<sup>th</sup> MAW, 4<sup>th</sup> MLG, and MOBCOM, are separation authorities for their respective enlisted Marines.

(2) Special Cases. For Marines within 2 years of eligibility for retirement or retainer pay, the separation authority is CMC (M&RA) (for active duty) and SECNAV (for members of the Reserve Component, Active Reserve). See paragraphs 6307.1c and 6307.1d, MARCORSEPMAN.

f. Drug and Alcohol Dependency. Evidence of alcohol or drug dependence requires that the respondent be evaluated before the case is referred to a board or forwarded to the separation authority. See MCO P5300.12A for evaluation, counseling, and treatment requirements.

6. Preparing the Notification, the Acknowledgment of Rights AOR) and the Board Correction Naval Record/Naval Drug Review Board (BCNR/NDRB) forms.

a. Using the Correct Form for Notification and AOR.

After determining a Marine should be processed for administrative discharge, the command must formally notify the Marine of the proposed discharge. The letter of notification, acknowledgment of rights and BCNR letter are automatically drafted and printed from the MCEAS system. Three factors dictate the proper notification and acknowledgment of rights forms: board eligibility; In the Hands of Civilian Authority (IHCA) status; and pay grade.

b. Entitlement to a Board. See notes 7 and 8 of Table 6-2, MARCORSEPMAN. A Marine is entitled to a board if:

(1) The least favorable characterization of service authorized is other than honorable (OTH). Note that if an OTH can be awarded, the Marine is entitled to a board even if the command recommends a general or honorable discharge; or

(2) The Marine commits misconduct in the civilian community, and at the time of the misconduct he/she is not on active duty nor in a drilling status, provided the conduct directly affects the performance of military duties; e.g., armed robbery. In this case, an OTH may be awarded; therefore, the service member is entitled to an AdSep Board. (Most misconduct in the civilian community will be service related; therefore, commands should contact the MARFORRES Administrative Separations section for detailed guidance); or

(3) The Marine has six or more years of active and inactive service (regardless of possible characterization); or

(4) The basis for processing is homosexual conduct. A Marine may request a board regardless of possible characterization. See paragraphs 6207.5 and 6207.6 of the MARCORSEPMAN and Table 6-2, MARCORSEPMAN.

If the Marine is entitled to a board, use figures 5-2 and 5-3 of this SOP. If the Marine is not entitled to a board, use figures 5-4 and 5-5 of this SOP.

c. Marines IHCA. See MARCORSEPMAN, paragraph 6303.4a, for additional notification requirements to be added to the basic format found in figure 5-2 of this SOP. MCEAS will automatically draft the additional notification requirements for the notification letter and acknowledgment of rights.

of this SOP. MCEAS will automatically draft the additional notification requirements for the notification letter and acknowledgment of rights.

d. Marines in Pay Grade E-4 or Above. **In a case in which an other than honorable characterization is authorized**, the notification **and** acknowledgment of rights must advise the Marine that upon discharge of under other than honorable conditions he/she will be reduced to pay grade E-3. See MARCORSEPMAN, paragraph 6311.8.

e. BCNR/NDRB Form. This form, found at Appendix D of the MARCORSEPMAN, must be an enclosure to the notification letter. The BCNR/NDRB form is automatically prepared by MCEAS.

f. Use Proper Characterization and Basis.

(1) Characterization of Discharges. One of three characterizations of discharge will be recommended:

- (a) Honorable;
- (b) General (under honorable conditions); or
- (c) Under other than honorable conditions (OTH).

If an OTH is authorized, use OTH as the least favorable characterization even if the command recommends honorable or general characterization or if a general or OTH is unlikely due to paragraph 1004.4d of the MARCORSEPMAN.

(2) Basis of Discharge. To ensure proper notification and speedy processing, commands must ensure the proper basis for discharge is selected. For example, do not confuse unsatisfactory PERFORMANCE (e.g. PFT failure) under paragraph 6206 of the MARCORSEPMAN with unsatisfactory PARTICIPATION (e.g. missing drills) under paragraph 6213, MARCORSEPMAN.

g. Signature Requirements for Notification Letter

In All Cases. Notification letters must be signed **personally** by I-I; Site Commander, or CO. During the CO's official absence, such correspondence will be signed "Acting" by the officer temporarily succeeding to command. Do not sign "for" or "by direction." The "Unavailable for signature . . ." language may be used only for a Reserve commander. Ensure the **SIGNED** letter of notification is scanned into the Internet File Server (IFS) folder in MCEAS.

7. Serving the Notification, Acknowledgment of Rights, and BCNR/NDRB. There are two types of proper service: (1) Personal Contact and (2) Certified Mail, Restricted Delivery, Return



Receipt Requested. Any other type of service such as FedEx or telephone call are improper and will cause the Adsep package to be returned for proper service.

a. Service by Personal Contact (Personally Delivering Notification and enclosure to Marine).

(1) Active Duty Marines not IHCA or Unauthorized Absence (UA) must be personally served.

(2) Marine Reservist not on active duty, not in confinement. MARCORSEPMAN, paragraph 6303.4b(5), requires that a reasonable effort should be made to furnish copies of the notice to the member through personal contact by a representative of the command. Under MARFORRES policy, a "reasonable effort" requires a command representative to make a reasonable effort to furnish copies of the Notification, AOR, and BCNR and NDRB forms through personal contact with the Marine Reservist during the normally scheduled IDT, AT, or ADSW, (normally at the drill site). If service by personal contact is successful, the Reservist need not be served by mail. **NOTHING IN THIS POLICY PRECLUDES THE LOCAL COMMANDER FROM PERSONALLY SERVING A MARINE RESERVIST AT HIS/HER LAST KNOWN ADDRESS.**

b. Service By Certified Mail. Service by Certified mail is required if service by personal contact is unsuccessful (i.e., the Marine Reservist no longer attends drill and the command cannot accomplish personal contact through reasonable effort). Serve notice by the United States Postal Service **CERTIFIED MAIL, RESTRICTED DELIVERY, RETURN RECEIPT REQUESTED** (USPS PS Form 384) to the most recent address furnished by the Marine for receipt and forwarding of official mail.

c. Documenting Service

(1) Affidavit of Service. The result of personal contact or mail service is documented in the affidavit of service. The affidavit of service is available in the notification tab in MCEAS. Ensure the acknowledgment of rights, BCNR/NDRB form and the affidavit of service are scanned into the IFS folder in MCEAS. Figure 5-6 of this SOP is a sample Affidavit of Service.

(2) When to Document. Documentation of service is done after whichever of the following occurs first:

- (a) command receives the Area of Responsibility (AOR); or
- (b) package is returned unclaimed or undeliverable; or

(c) Marine has not returned the AOR within the following period:

MARINE'S STATUS	METHOD OF SERVICE	NBR OF DAYS TO RETURN AOR *
Active duty	Personal	2 working days
Reservist	Personal or certified mail	20 calendar days
IHCA (AD or Res)	Personal or certified mail	30 calendar days

\*NOTE: 2, 20, or 30 days are from the date of receipt (if delivered in person) or from the date of signature on the USPS PS Form 384 (if delivered by mail). In counting days, do not count the date of receipt (personal service) or the date the USPS PS Form 384 was signed (service by mail).

(3) Certified Mail. If service was by USPS Certified Mail, Restricted Delivery, Return Receipt Requested, attach/scan the originals of (1) the receipt (PS Form 3800) and (2) USPS PS Form 384. If the envelope was returned undelivered, scan the envelope with postal annotations. (NOTE: If the envelope is returned undelivered, the addressee's block of the USPS PS Form 384 will be unsigned)

(4) Personal Contact. If personal service was successful, attach/scan the PERSONAL RECEIPT OF NOTIFICATION OF DISCHARGE PROCEEDINGS, see figure 5-7 of this SOP.

(5) Command Letter of Recommendation. The command letter of recommendation must state that service by personal contact was made successfully or that service by Certified Mail, Restricted Delivery, Return Receipt Requested was used because service by personal contact was unsuccessful.

(6) Annotations on Acknowledgment of Rights if Unreturned, Unsigned, or Rights not Selected. Paragraphs 6303.3c and 6304.4 of the MARCORSEPMAN require annotations on the command's copy of the acknowledgment of rights (AOR) form if the original was served by mail and the Marine did not acknowledge receipt or return the AOR in a timely manner. Also, annotation is required if the Marine does not sign the AOR or if he declines to respond or to select rights. See blocks for annotations on figures 5-3 and 5-5 of this SOP.

8. Respondent's Right to Consult With a JA Before Executing the Acknowledgment of Rights Form. See MARCORSEPMAN, paragraphs 6303.3b and 6304.3a. If a respondent wants to consult a military counsel before executing the AOR, the command will contact the MARFORRES military justice section. The military justice section will coordinate assigning defense counsel with the nearest Marine Corps LSSS or NLSO. Except under limited circumstances outlined in paragraph 6303.3b, MARCORSEPMAN, the consultation must be with an attorney. Note that this right to consult counsel concerning the acknowledgment of rights is different from the right to have counsel representation at Administrative Discharge board; see MARCORSEPMAN, paragraph 6304.3b.

5101. COMMAND LETTER OF RECOMMENDATION FOR ADMINISTRATIVE DISCHARGE (WITHOUT BOARD)

1. Contents

a. General. The command initiating the discharge should forward/certify the package to the Separation Authority, via the normal chain of command, with a letter of recommendation; see paragraph 6305 of the MARCORSEPMAN. Figure 5-8 of this SOP, is the recommended format used for cases without boards. For cases with boards, use the format at figure 5-9. The command letter of recommendation is automatically created in MCEAS.

b. Purpose. The letter recommendation provides the Separation Authority with additional facts and documentation to determine the Marine's potential for future service and to determine if discharge is warranted. The letter must include the general, specific, and factual basis for discharge and the recommended characterization.

c. Unsatisfactory Participation Cases. In unsatisfactory participation cases, each Separation Authority requires that commands indicate efforts to determine why the Marine is missing drills. Accordingly, at a minimum, the command endorsement will summarize what efforts the command made to contact the Marine, determine why he was missing drills, and to assist him in attending drills. This can be done by including a worksheet like that at figure 5-17 as an enclosure to the command letter of recommendation (figure 5-8) if the case is not before a board. In addition to the worksheet the command should scan the following items into the MCEAS supporting documents folder as enclosures to the endorsement:

(1) Statements by senior SNCO or officers in the chain of command concerning efforts to contact the Marine, and to return him/her to a satisfactory drill status.

(2) Letters concerning administrative reduction or unsatisfactory participation. Also, the unit should consider documenting on the front or the reverse of muster sheets any efforts to contact Marines who miss drill; the muster sheet is a convenient place to record these efforts and serves as a reminder to call Marines as soon as their absences are noted. Annotated muster sheets could then be submitted with the discharge package. Finally, although they are not a prerequisite for discharge for unsatisfactory participation, page 11 counseling entries can be used to document command efforts to contact or to assist Marines who miss drill.

d. Rebuttal Statements by Marine. Two problems can occur after the respondent indicates on the acknowledgment of rights that he wants to include a statement or rebuttal. First, if he subsequently **DOES NOT** provide the statement or rebuttal, the command must note in the letter of recommendation that it was never received. Second, if the Marine **DOES** include the statement or rebuttal, **THE COMMAND MUST ADDRESS ANY ALLEGATIONS THE MARINE MAKES IN THE STATEMENT OR REBUTTAL.**

2. Service. The command recommendation letter must explain whether service was by USPS mail or in person.

3. Signatures

a. Respondent is a Reservist. For all MARFORRES units, except MOBCOM, the Reserve CO will sign/certify the letter in MCEAS. If the Reserve CO is unavailable, the I-I/Site Commander may certify the letter if the Reserve CO knows about the recommendation for discharge and concurs in it. For MCRSC, only the commander will sign/certify the letter in MCEAS. In MCEAS, a certification of the letter serves as the personal signature of the Reserve CO or I-I/Site Commander. Only one certifier can forward the recommendation of discharge. See certifier role description in MCEAS User Manual for additional information.

b. Respondent is on Active Duty. For active duty personnel, the active duty commander alone certifies.

c. In All Cases. When a signature is required, it will be the **personal** certification of the I-I/Site Commander, or CO. During the CO's official absence, command recommendations will be signed/certified "Acting" by the officer temporarily succeeding to command. Do not sign "for" or "by direction."

4. When to Certify. Do not sign/certify the command letter until after one of the following occurs:

- (a) the command receives the acknowledgment of rights;
- (b) the package is returned unclaimed; or
- (c) the time for responding has expired and;
- (d) all supporting documents have been uploaded.

5. Enclosures. See MARCORSEPMAN, paragraph 6305. General Rule. Figure 5-8 of this SOP lists enclosures for the command letter. These enclosures must be scanned as supporting documents in the IFS folder in MCEAS. MARFORRES requires the standard SRB pages (right side) and DD Form 1966.

**Enclosures do not have to be certified true copies.** Much of the pertinent information from the SRB will also be automatically downloaded from the Marine Corps Total Force System (MCTFS) to the Marine's involuntary administrative separation folder in MCEAS.

6. Additional Requirement for Conduct by Reservist in the Civilian Community. A Marine Reservist may be processed for discharge based on conduct occurring while the Reservist is not on active duty or active duty for training. MARCORSEPMAN, paragraph 1004.4d, prohibits general or OTH characterization of service unless certain requirements are met. If the command recommends a general or OTH in such cases, the command must provide evidence that satisfies the requirements of paragraph 1004.4d. Such evidence should include any conduct that directly affects the performance of military duties (service related). See paragraph 5201.1b of this SOP.

7. Forwarding to MARFORRES

a. Transmittal. MCEAS will automatically forward the package electronically to MARFORRES (SJA) upon certification.

b. Chain of Command. The Reserve CO or I-I/Site Commander will notify the chain of command of the proposed administrative separation proceedings via electronic mail (e-mail) within MCEAS. For example, if the Company Commander certifies an administrative separation package, he or she will then provide notice of the proposed separation to the Battalion and Regiment commanding officer(s). The entire chain of command will have 30 days from date of certification to review and endorse the administrative discharge package. After 30 days, the certified package is subject to MARFORRES SJA review for legal sufficiency.

5102. ADMINISTRATIVE DISCHARGE BOARDS

1. Authority to Appoint Administrative Discharge Boards. Per the MARCORSEPMAN, only officers who have special court-martial convening authority may convene boards.

2. Detail of Administrative Discharge Board Personnel

a. Appointing Order Format. Appointing orders for administrative discharge boards will be in the format of figure 5-10 of this SOP. The appointing order must accurately reflect each member's component (USMC or USMCR). Appointing board members and signing appointing orders are the **personal** responsibilities of the convening authority; these tasks cannot be delegated. The CA's **personal** signature will be on all appointing orders and modifications. A copy of the signed and dated appointing order will be scanned as a supporting document in the IFS folder in MCEAS.

b. Members. Administrative discharge boards will have the composition required by MARCORSEPMAN, paragraph 6315.1; **see 6315.1b for special requirements if the respondent is a reservist.** Board members should be detailed from the respondent's unit if possible. If the command cannot obtain the required number of members for the board, the command should call the MARFORRES SJA for guidance. The convening authority will **not** be a member of the board.

c. Recorder and Defense Counsel. The appointing order must name the recorder and the detailed defense counsel. The recorder must be an officer, but need not be a lawyer. The detailed defense counsel must be a lawyer certified under Article 27(b), UCMJ. To obtain a detailed defense counsel, the CA must submit a RLS to the OIC of the local NLSO or the local Marine Corps law center requesting a counsel for the respondent. Contact the MARFORRES OSJA for more guidance. The right to representation by counsel at the board (MARCORSEPMAN, paragraph 6304.3b) is different from the right to consult counsel before signing the acknowledgment of rights (MARCORSEPMAN, paragraphs 6303.3b and 6304.3a).

3. Duties of the Recorder for the Administrative Discharge Boarda. General. The recorder must:

(1) Review the duties of the recorder as outlined in section 6315.3 of the MARCORSEPMAN;

(2) Prepare the hearing guide (figure 5-12 of this SOP) and have copies of exhibits for the counsel for the respondent

and each member. NOTE: In homosexual conduct cases, the guide must be tailored to accommodate the special requirements in these types of cases. Call OSJA MARFORRES for assistance.

(3) Prepare the findings and recommendations worksheet (figure 5-14 of this SOP, figure 5-15 for homosexual conduct cases) and summarized record (figure 5-16) of the board;

(4) Arrange for the proceedings to be recorded using audio tapes or, if available, a court reporter; and

(5) If the respondent is pay grade E-5 or above, the recorder should order the respondent's Official Military Personnel File (OMPF) from CMC (MMSB) well in advance of the hearing. This can be done by calling MMSB at DSN 278-3931 (commercial (703) 784-3623) with a follow-up fax at DSN 278-5792 (commercial (703) 784-5792). The request should state that the OMPF is requested for an administrative discharge board and that all microfiche are desired (including fitness reports). The recorder should examine all of the OMPF.

b. Misconduct by Reservists. If the basis for discharge is conduct by a Reservist who was not on active duty or active duty for training at the time of the conduct, the recorder should review paragraph 1004.4d of the MARCORSEPMAN, which prohibits general or OTH characterization unless certain requirements are met. See also paragraph 5201.1b of this SOP.

c. Unsatisfactory Participation. The recorder will ensure the record includes documentation for unexcused absences.

4. Notice of Board Hearing; Respondent's Absence. The command will notify the respondent in writing of the date, time, and place of the hearing. Use figure 5-11 of this SOP as an example. If served in person, obtain a written receipt and attach it to the command copy of the letter. If served by USPS mail, use PS Form 384 certified mail and attach the PS Form 3811 to the command's copy of the letter. If the respondent has received such notification, then the board may proceed in his absence if counsel for the respondent is present (defense counsel must always be present at a board hearing unless excused by the respondent). All documentation of service efforts will be included as a government exhibit if the respondent is absent from the board.

5. Conditional Waiver of a Board. The respondent may offer to waive the hearing if the discharge authority approves a general or honorable discharge. See MARCORSEPMAN, paragraphs 6308.1b and 6304.5. The command will explain in its endorsement the reasons for supporting or opposing such an offer.

6. Hearing. The board hearing will follow the hearing guide at figure 5-12 of this SOP. The respondent will sign the Privacy Act statement at figure 5-13 if the respondent testifies. The board will announce its findings and recommendations by using the worksheet at figure 5-14 (figure 5-15 for homosexual conduct cases), which doubles as the findings and recommendations worksheet and the board report.

7. The Board's Report. MARCORSEPMAN, paragraphs 6319 and 6320.

a. Contents and Format. The report will follow the format of figure 5-14 (figure 5-15 for homosexual conduct cases). Enclosure (1) to the report is the record (figure 5-16); enclosure (2) is the minority report (if any). The Board must include a recommendation regarding transfer to the IRR if required by MARCORSEPMAN, paragraph 6319.5d. See paragraph 6207 for homosexual conduct cases.

b. Signatures. Only those members concurring in all the majority's findings and recommendations will sign the report.

c. Minority report. See MARCORSEPMAN, paragraphs 6319.6 and 6320.1j. Any member disagreeing with a finding or recommendation of the board must submit a minority report. Anyone signing a minority report will not sign the majority report.

8. The Board's Record. MARCORSEPMAN, paragraphs 6319 and 6320.

a. When Required. A record will be prepared in every case. Whether or not a written transcription is ultimately required, at a minimum, the proceedings shall be recorded using audio tapes or, if available, a court reporter.

b. Contents. The record will follow the format of figure 5-16.

The record has two parts: a **summarized transcript** (verbatim if required by the separation authority or authorized by the convening authority) of the hearing and all **exhibits**. Both the summarized transcript and the exhibits will be scanned as supporting documents in the IFS folder in MCEAS. **All exhibits must be legible and clearly marked.**

The record must explain any rulings on the admissibility of evidence. The record must also explain the absence of the respondent if the respondent is absent from all or part of the proceedings. The transcript will contain a summary of testimony of (a) any witness testifying at the board under oath and (b) any unsworn oral statements made by the respondent or counsel on behalf of the respondent. In a summarized transcript, argument of counsel need not be summarized.